



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON BROWN
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: November 15, 2024
MOAHR Docket No.: 24-011509
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on November 6, 2024. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Angela Ware, Eligibility Specialist. Petitioner's niece [REDACTED] provided translation services.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit rate and provide retroactive FAP benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner is an ongoing FAP recipient with a group size of three as his wife is disqualified from the receipt of FAP benefits because she has not been a Lawful Permanent Resident for at least five years.
2. Petitioner is responsible for his heat and electricity costs and has a housing expense of \$700.00.
3. On August 24, 2024, Petitioner began receiving Unemployment Compensation Benefit (UCB) benefits; however, due to processing rules, the Department did not consider any payments in his FAP budget until September 7, 2024 and September 21, 2024, both in the amount of \$586.00.
4. On September 3, 2024, the Department was able to verify Petitioner's loss of employment and the change was made effective July 2024.

5. On October 25, 2024, the Department received Petitioner's request for hearing disputing the Department's calculation of his FAP benefit rate and retroactive benefits from May 2024 to present.
6. Petitioner was issued the following FAP benefits in a combination of regular issuances and supplements for each month:

<u>Benefit Month</u>	<u>Issuance</u>	<u>Date of Notice of Case Action</u>
May 2024	\$649.00	January 25, 2024
June 2024	\$649.00	January 25, 2024
July 2024	\$766.00	No Notice of Case Action issued
August 2024	\$766.00	September 3, 2024
September 2024	\$766.00	September 3, 2024
October 2024	\$665.00	September 7, 2024
November 2024	\$665.00	October 17, 2024

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, Petitioner disputes the Department's calculation of his FAP benefit rate in addition to any supplements and benefits dating back through May 2024. Pursuant to policy, all hearing requests must be received by the Department within 90 days of the Notice of Case Action. BAM 600 (June 2024), p. 6. The only exception for FAP cases is when the client is disputing the current level of FAP benefits which may be done at any time. BAM 600, p. 7. In this case, the Department issued the Notice of Case Action regarding Petitioner's May and June 2024 FAP benefits on January 25, 2024 and Petitioner's hearing request disputing his benefit rate for these months was not received by the Department until October 25, 2024, more than 90 days after the Notice of Case Action. Because Petitioner's dispute of benefits for May and June was not for a current month and because the Notice of Case Action was more than 90 days prior to Petitioner's request for hearing, Petitioner's FAP benefit rate calculation for May and June 2024 is not addressed by this decision as it is not a timely hearing request.

Petitioner's request for hearing as it relates to his July 2024 FAP benefit rate is addressed by this decision because the Department did not issue a Notice of Case Action regarding the change in Petitioner's benefit rate; therefore, he had no Notice of Case Action from which to act within 90 days.

In addition, Petitioner's request for hearing as it relates to Petitioner's FAP benefits for August 2024 through November 2024 was timely because the relevant Notices of Case Action were issued on September 3, 2024 and October 17, 2024. Therefore, the benefit rate for these months are also addressed.

In this case, Petitioner disputes the Department's calculation of his FAP benefit rate. To determine whether the Department properly calculated Petitioner's FAP benefit rate, the evaluation first starts with consideration of all countable earned and unearned income available to the group. BEM 500 (April 2022), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2023), p. 1. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 4-9. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. For income received on a biweekly basis, the income is averaged and multiplied by 2.15. BEM 505, p. 8. In July 2024 and August 2024, the Department budgeted [REDACTED] income for Petitioner. For September through November 2024, the Department budgeted unearned income from UCB in the amount of [REDACTED]. Petitioner had a biweekly UCB of [REDACTED]. Petitioner's standardized income for September through November is [REDACTED] (dropping the cents).

After consideration of income, the Department considers all appropriate deductions and expenses. No evidence was presented that Petitioner or his children are seniors, disabled, or disabled veterans; therefore, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter deduction.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.

BEM 550 (April 2023), p. 1; BEM 554 (January 2024), p. 1; BEM 556 (January 2023), pp. 4-6.

Petitioner is eligible for the standard deduction of \$198.00 for a group size of three for July through September 2024 and \$204.00 for a group size of three from October 2024, ongoing. RFT 255 (October 2023; October 2024), p. 1; BEM 556, p. 4. No evidence was presented of any dependent care or child support expenses. FAP groups are allowed the unreimbursed dependent care expenses for children under the age of 18, or an adult of

any age who is incapacitated and a member of the FAP group when the care is necessary to enable a member of the FAP group to work. BEM 554, p. 7. The deduction is the amount the FAP group actually pays out-of-pocket. *Id.* After consideration of each of these expenses, Petitioner's Adjusted Gross Income (AGI) is [REDACTED] for July and August because a negative income is not possible; [REDACTED] for September 2024; and [REDACTED] for October 2024, ongoing.

Once the AGI is calculated, the Department must then consider the Excess Shelter Deduction. BEM 554, p. 1; 7 CFR 273.9(d)(6). The Excess Shelter Deduction is calculated by adding Petitioner's housing costs to any of the applicable standard deductions and reducing this expense by half of Petitioner's AGI. BEM 556, pp. 4-7; 7 CFR 273.9(d)(6)(ii). Petitioner has a housing expense of \$700.00. The heat and utility standard deduction (H/U) of \$680.00 for July through September 2024 and \$664.00 for October 2024, ongoing, covers all heat and utility costs including cooling except actual utility expenses (repairs or maintenance). BEM 554, p. 16. When a client is not responsible for heating and/or cooling costs, the client may receive utility standard deductions for non-heat electric, water and/or sewer, telephone, cooking fuel, and trash as applicable. BEM 554, pp. 22-25. The Department is required to annually review these standards and make adjustments to reflect changes in costs. 7 CFR 273.9(d)(6)(iii)(B). The expenses and factors outlined here are the only expenses considered for purposes of calculating the FAP budget and determining eligibility. After each item is considered, Petitioner's total housing cost is added together (\$1,380.00 for July through September 2024 and \$1,364.00 for October 2024, ongoing) and reduced by 50% of Petitioner's AGI resulting in an excess shelter cost of \$1,380 for July and August 2024, \$850 for September 2024, and \$837 for October 2024, ongoing. *Id.* Pursuant to policy, the excess shelter deduction is capped at \$672.00 for July through September 2024 and \$712.00 for October 2024, ongoing. BEM 554, p. 1; RFT 255, p. 1.

Next, the excess shelter cost is deducted from Petitioner's AGI to total his net income of [REDACTED] for July and August 2024; \$[REDACTED] for September 2024; and \$[REDACTED] for October 2024, ongoing. *Id.* A review of the Food Assistance Issuance Table shows that Petitioner is eligible for the full FAP benefit rate of \$766.00 for July and August 2024; \$649.00 for September 2024; and \$665.00 for October 2024, ongoing. BEM 556, p. 6; RFT 260 (October 2023; October 2024), pp. 1, 5, 6. The Department properly calculated Petitioner's FAP benefit rate for July and August 2024, overissued Petitioner's FAP benefits for September 2024, and properly determined Petitioner's FAP benefit rate for October 2024, ongoing.

Ordinarily because Petitioner received an overpayment of FAP benefits for September 2024, the Department could attempt to collect or recoup the overpayment. However, in this case, the overpayment was less than \$250.00 and policy prevents the establishment of a debt. BAM 700 (June 2024), p. 5. Therefore, it was a harmless error and the Department's calculated FAP benefits rates are not changed by this decision.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it calculated Petitioner's FAP benefit rate.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

AM/ml



Amanda M. T. Marler
Administrative Law Judge

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Electronic Mail:

DHHS

Tracy Felder

Wayne-Southwest-DHHS

2524 Clark Street

Detroit, MI 48209

MDHHS-Wayne-41-Hearings@michigan.gov

Interested Parties

BSC4

M Holden

B Cabanaw

N Denson-Sogbaka

MOAHR

Via First Class Mail:

Petitioner

[REDACTED]

[REDACTED]

[REDACTED] MI [REDACTED]