



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 16, 2018
MAHS Docket No.: 18-002283
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, an in-person hearing was held on April 11, 2018, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by [REDACTED], Eligibility Specialist, and Tamika Harris, Assistance Payments Supervisor.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case effective December 1, 2017?

FINDINGS OF FACT

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

1. On January 30, 2018, the parties participated in a telephone hearing before Administrative Law Judge Ellen McLemore (ALJ) in Michigan Administrative Hearing System Docket Number 17-016316.
2. On February 2, 2018, ALJ issued a decision and order in docket number 17-016316 holding that the Department did not properly close or suspend Petitioner's FAP benefits case, that they should reinstate her FAP case effective December 1, 2017, and that the Department should issue supplements to Petitioner for any FAP benefits that she was eligible to receive but did not from December 1, 2017, ongoing until notice of change is provided.

3. On February 8, 2018, the Department issued a new Notice of Case Action after having reviewed Petitioner's FAP case in compliance with the decision of ALJ and determined that Petitioner's household income was over the gross income limit; therefore, her case was closed.
4. On February 27, 2018, the Department received Petitioner's request for hearing disputing the closure of her FAP case.

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 first argues that the Department erred in reevaluating her FAP case and closing it after ALJ's decision. Ultimately, ALJ's decision indicates that benefits and supplements should be issued to Petitioner for benefits she was eligible to receive. Therefore, if Petitioner was not eligible for benefits, ALJ's decision does not require benefits to be issued. The only way for the Department to know whether Petitioner was eligible to receive benefits is to take the information available to it for the relevant period and evaluate eligibility. Therefore, the Department did not err in reevaluating Petitioner's FAP case from December 1, 2017, ongoing.

Next, Petitioner argues that the Department improperly included [REDACTED] (Child 1), her son, as a group member when the Department determined her FAP eligibility. Since Petitioner believes that he was improperly included as a group member, his income was also improperly included in determining her FAP eligibility. FAP group composition is established by determining who lives together, the relationships of those living together, whether they purchase and prepare food together or separately, and whether the individuals reside in eligible living situations. BEM 212 (January 2017), p. 1. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the children have their own spouse or child who lives in the group. *Id.* When a member is added to a group causing an increase in benefits, the increase is effective the month after it is reported, or if the new member left another group, the month after the member delete. BEM 212, p. 9. When a group member leaves a group to apply on their own or to join another group, a member delete should

be completed in the month the local office learns of the application/member add. *Id.* Recoupments should be initiated immediately if necessary. BEM 212, p. 9. Policy does not specifically address the situation as described in this case where an individual leaves a group and does not join a new group or establish their own.

On December 19, 2017, the Department received Petitioner's report that Child 1 had left the home on December 4, 2017, and as having moved in with his older sister. Since Child 1 was reported as leaving the home in December, and because the Department reevaluated Petitioner's December 2017 eligibility in February 2018, the Department should have excluded him from the FAP group and excluded his income when determining Petitioner's FAP eligibility. Therefore, the Department erred in including Child 1 as a group member from December 2017 ongoing.

Turning to Petitioner's next concern, Petitioner argues that the Department improperly considered her daughter [REDACTED] (Child 2) income because Child 2 is still in high school and in the alternative did not consider her income properly because she is paid on a bi-weekly basis rather than a weekly basis. As discussed above, parents and their children under 22 years of age who live together must be in the same group. BEM 212, p. 1. However, a person who is in student status and does not meet the criteria set forth in BEM 245 is a non-group member. BEM 212, p. 9. A person enrolled in a post-secondary education program may be in student status and is not eligible for FAP benefits if that person does not meet certain criteria. BEM 245 (October 2017), p. 2. In FAP cases, a person is considered to be in student status if that person is age 18-49 and enrolled half-time or more in a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245, p. 4. Child 2 is [REDACTED] years old and working to complete her high school education; therefore, she is properly considered part of the group.

All countable earned and unearned income available to the group must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (January 2016), pp. 1-5. In this situation, Child 2 is an eligible group member with employment income; therefore, her income is available to the group and must be considered.

The Department determines a client's eligibility for program benefits based on the group's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2017), 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. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Income received twice per month is added together. BEM 505, p. 8. Income received biweekly is converted to a standard amount by multiplying the average of the bi-weekly pay amounts by the 2.15 multiplier. Income received

weekly is converted to a standard amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. BEM 505, pp. 7-9.

The Department testified that Child 2's income was considered on a weekly basis and prospected according to the weekly income procedures. The Verification of Employment states that she is paid on a bi-weekly basis. However, after review of the pay information provided by the employer to the Department and the verification of employment, the pay records provided are unclear as to her pay schedule. On December 4, 2017, there was a payment of \$[REDACTED] because she was selected as employee of the month, essentially a bonus pay. There were also checks issued on December 13, 2017, for the pay period ending on December 9, 2017; December 22, 2017, for a pay period ending December 23, 2017; and another check issued on December 29, 2017, again for the pay period ending December 23, 2017. In addition, there was another paycheck listed for December 30, 2017, for a pay period ending January 3, 2018, for \$[REDACTED] and zero hours. These pay records do not reflect a weekly pay schedule nor do they reflect a bi-weekly pay schedule. Given the considerable confusion created by the Employer's pay records and the conflicting information provided by the Verification of Employment signed by the Employer, it is unclear how Child 2 was paid. Rather than choosing to use a weekly pay schedule contradictory to the Verification of Employment, the Department should have sought clarification of the conflicting and confusing information.

Finally, at the hearing, there was considerable review of the earned income deduction and its applicability when calculating both the gross and net income budgets. Gross countable earned income is reduced by a 20% earned income deduction during calculation of the net income budget, not when determining whether a group passes the gross income test. BEM 550 (January 2017), p. 1. The only exception to the application of the 20% earned income deduction is when income is not timely reported to the Department. BEM 556 (July 2013), p. 3. The Department conceded that the earned income for the household was improperly listed in the earned income ineligible for the earned income deduction section of the gross income budget; however, this error does not affect the outcome of the case if the group does not pass the gross income test. In this case, Petitioner reported earned income on the September 2017 Redetermination; therefore, if the Petitioner passes the gross income test, the earned income deduction should be applied. Since Child 1 was improperly considered in the group, the gross income for the household will be adjusted and the group size would be reduced. In addition, clarification of Child 2's income pay schedule may result in changes to the group gross income. Therefore, at this point, eligibility based upon the gross income limit cannot be determined.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FAP case as a result of income over the gross income limit.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstatement and reprocess Petitioner's FAP benefit case effective December 1, 2017;
2. If Petitioner is eligible for FAP benefits after the reinstatement and reprocessing, issue FAP supplements for December 1, 2017, ongoing in accordance with Department policy; and
3. Notify Petitioner in writing of its decision.



AM/

Amanda M. T. Marler
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

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

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

DHHS

[REDACTED]
[REDACTED]

Petitioner

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