



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: April 18, 2019
MAHS Docket No.: 19-002553
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 April 15, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Tom Ayers, Family Independence Manager, and Jennifer Leich, Assistance Payments Worker.

ISSUE

Did the Department properly determine Food Assistance Program (FAP) eligibility?

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 May 14, 2018, Petitioner's husband was placed in non-cooperation with the Office of Child Support (OCS).
2. On January 1, 2019, Petitioner began serving a disqualification from the FAP as a result of an Intentional Program Violation (IPV) which continues until December 31, 2019.
3. Effective February 1, 2019, the Department closed Petitioner's FAP case.
4. On February 14, 2019, the Department issued a Notice of Case Action to Petitioner informing her of the closure of the FAP case effective February 1, 2019 due to excess income based upon a group size of one after removal of Petitioner's

husband from the group due to non-cooperation with the OCS, removal of Petitioner from the group based upon a disqualification after a finding of an IPV, and removal of her two step-sons because they were out of the home.

5. On March 4, 2019, the Department received Petitioner's verbal request for hearing disputing the Department's closure of her FAP benefits.

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's FAP case was closed for excess income after several people were removed from the group. Petitioner disputes the closure of FAP benefits as well as the removal of her two step-sons from the group. FAP group composition is established by determining who lives together, the relationships of the people living together, whether they purchase and prepare food together, and whether there is some other eligible living arrangement. BEM 212 (January 2017), p. 1. Parents and their child 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 with the group. *Id.* When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparents, etc., a primary caretaker must be determined. BEM 212, p. 3. The primary caretaker is the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. BEM 212, p. 2. The Department must consider how many days the child sleeps at the client's home in a calendar month, a client's statements, statements of other caretakers, and other sources of verification. BEM 212, p. 4. If the child spends virtually half of the days in each month, averaged over a twelve-month period with each caretaker, the caretaker who applies and is found eligible first, is the primary caretaker. BEM 212, p. 4.

The Department was alerted to the fact that the two step-sons were no longer in the home because the children's mother contacted the Department. Petitioner concedes that in November and December 2018, due to family dynamics, Petitioner and her

husband allowed the two boys to stay with their mother for additional days beyond what was there traditional custody agreement evenly split between the homes. Once the boys' mother had physical custody of the boys, she refused to return them to Petitioner and her husband (their father), then alerted the Department to the fact that the boys were no longer living with Petitioner. Unfortunately for Petitioner, policy does not take into consideration what should be the circumstances of custody and presence in the home based upon a court order, but instead only considers what is actually happening in the home. Since the boys were out of the home, the boys cannot be considered part of the group. The Department was correct in removing the boys from the FAP group.

Since Petitioner is serving a disqualification from the FAP and her husband has been in noncompliance with OCS since May 14, 2018, neither Petitioner or her husband are eligible group members. However, both household member's incomes are considered. BEM 550 (January 2017), p. 3. This leaves only one child as part of the group. The gross income limit for a group size of one with disqualified household members is \$1,316.00. RFT 250 (October 2018), p. 1. Clients who are not categorically eligible and those groups that do not have a senior, disabled, or disabled, veteran in the home must meet the gross income limit as well. BEM 550 (January 2017), p. 1.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (July 2017), 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 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. To determine a standardized income, income received on a weekly basis is multiplied by 4.3, income received every two weeks is multiplied by 2.15, and income received twice per month is added together. BEM 505, p. 8.

Petitioner had the following wages which were considered by the Department in determining her eligibility:

January 11, 2019	\$	
January 18, 2019	\$	
January 25, 2019	\$	
February 1, 2019	\$	

When Petitioner's income is averaged and multiplied by 4.3, her standardized income is \$ (dropping the cents). Petitioner's husband had the following wages which were considered by the Department in determining the group eligibility:

January 11, 2019 \$ [REDACTED]
January 25, 2019 \$ [REDACTED]

When Petitioner's husband's income is averaged and multiplied by 2.15, his standardized income is \$ [REDACTED] (dropping the cents). Since Petitioner's husband is disqualified from the FAP group due to non-cooperation with the OCS, his income is budgeted pro rata. BEM 550, p. 3. The income is prorated by adding the number of eligible FAP group members to the number of disqualified persons that live with the group, then dividing the income by this number and multiplying it by the number of eligible group members. BEM 550, p. 4. Since there is one eligible group member and two disqualified people in the home, Petitioner's husband's income is divided by three and multiplied by one for a prorated countable income of \$ [REDACTED] (dropping the cents). Adding the prorated income to Petitioner's standardized income, the group has a total household income of \$ [REDACTED] which is greater than the gross income limit for a group size of one, and closure of Petitioner's FAP case was appropriate.

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 closed Petitioner's FAP case based upon excess income after removal of the two boys from the group.

DECISION AND ORDER

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



AMTM/

Amanda M. T. Marler
Administrative Law Judge
for Robert Gordon, 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) 763-0155; 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

Jennifer Dunfee
MDHHS-Cass-Hearings

Petitioner

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