



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: April 24, 2019
MOAHR Docket No.: 19-003118
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 24, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Kandis Hill, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner's eligibility for Food Assistance Program (FAP)?

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 February 23, 2019, the Department received Petitioner's application for FAP benefits.
2. On February 25, 2019, the Department received paystubs dated January 11, 2019; February 1, 2019; February 8, 2019; and February 15, 2019.
3. On February 26, 2019, the Department issued a Verification Checklist (VCL) to Petitioner requesting proof of dependent care expenses, medical expenses, heat expenses, and earned income by March 8, 2019.
4. On February 28, 2019, Petitioner submitted an application for State Emergency Relief (SER).

5. On the same day, the Department issued a new VCL to Petitioner because of the SER application requesting proof of earned income for pay dates February 22, 2019 and March 1, 2019 by March 11, 2019.
6. On March 4, 2019, the Department received the additional paystubs.
7. On March 14, 2019, the Department issued a Notice of Case Action to Petitioner informing her that her application for FAP benefits had been approved for February 25, 2019 through February 28, 2019 in the amount of \$0.00 and denied from March 1, 2019, ongoing because of excess gross income.
8. On March 25, 2019, the Department received Petitioner's request for hearing disputing the denial of FAP benefits, calculation of income, and failure to process her Child Development and Care (CDC) application.

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).

Food Assistance Program (FAP)

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 disputes the Department's determination that she was not eligible for FAP benefits based upon excess gross income.

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. If income is fluctuating or irregular, the Department may review the past 60 or 90 days of income. BEM 505, p. 6. 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 should have been considered by the Department in determining her eligibility:

January 11, 2019	\$ [REDACTED]
February 1, 2019	\$ [REDACTED]
February 8, 2019	\$ [REDACTED]
February 15, 2019	\$ [REDACTED]
February 22, 2019	\$ [REDACTED]
March 1, 2019	\$ [REDACTED]

Thirty days prior to Petitioner's application is January 24, 2019. Therefore, checks between January 24, 2019 and Petitioner's application on February 23, 2019 are considered for her FAP eligibility. Petitioner is missing one check stub during the review period. However, she has provided sufficient information for the Department to make an accurate determination. Petitioner's income varies by almost two hundred dollars from pay period to pay period; therefore, an average of the paystubs provided will give a more accurate average income than if just the 30 days is considered. When Petitioner's income is averaged (\$[REDACTED] per week dropping the cents) and multiplied by 4.3 because her income is received weekly, her standardized income is \$[REDACTED]

The Department relied on State Emergency Relief Manual (ERM) policy in determining Petitioner's eligibility for FAP benefits. Nothing in ERM policy applies to FAP cases. Nothing in BAM or BEM policies allows the rules and procedures to change when determining FAP eligibility even if an SER application is submitted. Therefore, the Department's consideration of only one paycheck from March 1, 2019 was not in accordance with Department policy.

Next, the Department considered Petitioner's child support income as reported by the Office of Child Support. Petitioner contended that she does not receive a full child support benefit and provided the Department with proof of her monthly account statement for her child support card in order to show the Department what she actually receives. She also advised the Department that her child's father has an outstanding warrant for non-payment of child support and when she receives payments, it varies significantly because he is a tips-based employee with low hourly wages. In reviewing the documents provided by Petitioner as well as the Consolidated Inquiry showing Office of Child Support payment records, the payments received by Petitioner appear to be the same. The only difference in the February payments as shown by Petitioner's records is that the \$[REDACTED] payment released by the Office of Child Support to Petitioner on February 22, 2019 had not yet become available to Petitioner as of the last day of the monthly statement, February 25, 2019. Based upon other transactions in the

month, once the payment is released, it becomes available to Petitioner about four days later. Therefore, the payment from February 22, 2019 would have become available on February 26, 2019, one day after the monthly statement end date.

In considering child support income, the Department is required to consider the past three calendar months of income unless changes are expected. BEM 505, p. 4. The month of application is considered if all payments expected for the month have been received. *Id.* Amounts which are unusual or not expected to continue should be excluded from consideration. *Id.* If payments vary, the payment pattern should be discussed with the client to determine whether a pattern will continue or if a change is expected. *Id.* If the past three month's child support is not a good indicator of future payments, the Department is required to calculate an expected monthly amount for the benefit month based on available information and discussion with the client. BEM 505, p. 5.

Petitioner received the following total child support payments for each month: November 2018 - \$[REDACTED] December 2018 - \$[REDACTED] January 2019 - \$[REDACTED] February 2019 - \$[REDACTED]. The payments received by Petitioner vary greatly from one month to the next, and Petitioner advised the Department that the non-custodial parent is a tips-based worker with an outstanding warrant for non-payment of child support; therefore, an average from all months available is considered to determine her budgetable child support income because the income is variable. The average child support income from November 2018 through February 2019 is \$[REDACTED] (dropping the cents).

Adding the standardized employment income and the child support income, Petitioner has a total gross household income of \$[REDACTED].

In order to be eligible for FAP benefits, Petitioner must have gross income which is less than \$2,744.00 for a group size of two. RFT 250 (October 2018), p. 1; BEM 550 (January 2017), p. 1; BEM 213 (January 2019), pp. 1-2. Petitioner's gross income of \$[REDACTED] is below the gross income limit of \$2,744.00. Therefore, the Department erred in denying Petitioner's application for FAP benefits.

It should be noted that the Department denied Petitioner's FAP application based upon excess gross income and not based upon excess net income. Therefore, consideration of any and all expenses and/or deductions was not reviewed here as it is not relevant to a determination of eligibility based upon gross income.

Child Development and Care (CDC)

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

At the hearing, Petitioner indicated that her concerns about the processing of her CDC application had been resolved and that she did not wish to proceed with the hearing. Petitioner requested to withdraw the hearing request. The Department had no objection. Therefore, Petitioner's request for hearing is **DISMISSED**.

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 did not act in accordance with Department policy when it denied Petitioner's FAP application based upon the gross income limit.

DECISION AND ORDER

Petitioner's request for hearing as it relates to the **CDC** program is **DISMISSED**.

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. Redetermine Petitioner's February 23, 2019 application for FAP benefits;
2. If Petitioner is otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,
3. Notify Petitioner in writing of its decisions.



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 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

DHHS

Montrece White
MDHHS-Macomb-20-Hearings

Petitioner

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

BSC4
M Holden
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