



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]
Date Mailed: September 16, 2019
MOAHR Docket No.: 19-008760
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 September 11, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Supervisor, [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits based upon excess income?

Did the Department properly close Petitioner's Medical Assistance (MA) Program benefits based upon excess income?

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 has been a recipient of Unemployment Compensation Benefits (UCB) since April 20, 2019; her gross benefit amount is [REDACTED] biweekly which is reduced each period because of earned income.
2. On July 15, 2019, the Department received a Verification of Employment for [REDACTED] (Employer) indicating Petitioner was employed for 20 hours per week at a rate of [REDACTED] per hour, is paid bi-weekly, and had wages of [REDACTED] on June 14, 2019 and [REDACTED] on June 28, 2019.

3. On the same date, the Department received a paystub for Transform KM LLC (Employer 2) for pay date July 15, 2019 in the amount of \$[REDACTED]
4. On or after July 26, 2019, the Department received a paystub for Petitioner for Employer for pay date July 26, 2019 in the amount of [REDACTED]
5. On July 29, 2019, the Department received a paystub for Employer 2 in the amount of [REDACTED] for pay date July 29, 2019.
6. On July 31, 2019, the Department received a Change Report from Petitioner indicating that she had a change in self-employment income.
7. On August 1, 2019, the Department provided a DHS-431 Self-Employment Income and Expense Statement to Petitioner by mail.
8. On August 3, 2019, the Department received the completed form on which Petitioner listed income from self-employment at Lakes Management for pay date June 18, 2019 in the amount of [REDACTED], July 16, 2019 in the amount of [REDACTED] and July 30, 2019 in the amount of [REDACTED]; Petitioner also provided copies of each check stub.
9. A review of the State Online Query (SOLQ), an interface with the Social Security Administration accessible by the Department to aid it in determining a client's Social Security Benefit and Medicare participation, by the Department showed that effective August 1, 2019, Petitioner began receiving [REDACTED] per month in Retirement Survivors Disability Insurance (RSDI) benefits.
10. On August 7, 2019, the Department issued a Notice of Case Action to Petitioner informing her that effective September 1, 2019, Petitioner's FAP benefits would close because her net income exceeded the net income limit based upon a earned income of [REDACTED], Self-employment Income of [REDACTED], unearned income of [REDACTED], the Standard Deduction of \$158.00, housing costs of [REDACTED]1, and the heat and utility standard deduction (H/U).
11. On August 8, 2019, the Department received Petitioner's request for hearing disputing the Department's closure of her FAP and MA benefits.
12. On the same day, the Department received a copy of Petitioner's Social Security Administration (SSA) Aware Letter showing that Petitioner's RSDI benefit would not begin until September 25, 2019.
13. On August 12, 2019, after reviewing the letter, the Department removed the RSDI benefit from Petitioner's determination of eligibility for both FAP and MA benefits.
14. On August 14, 2019, the Department approved Petitioner's MA benefits.

15. The Department did not issue a new Notice of Case Action after the removal of the RSDI benefits from Petitioner's FAP case because other eligibility factors had not yet been met.
16. At the hearing on September 11, 2019, Petitioner testified that she was satisfied with the Department's actions related to her MA benefits and wanted to withdraw her hearing request solely as it related to her MA benefits; the Department did not object.

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).

Medical Assistance (MA) Program

The MA program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

At the hearing, Petitioner testified that she was satisfied with the Department's actions in resolving her concerns as it relates to her MA program benefits. As a result, Petitioner requested to withdraw the portion of her hearing request attributable to the MA program. The Department did not object. Therefore, Petitioner's request for hearing as it relates to the MA program is DISMISSED.

Food Assistance Program (FAP)

The 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 her FAP benefit. At the hearing, the Department conceded that Petitioner did not receive her RSDI benefit of [REDACTED] effective August 1, 2019 as they had originally believed but instead that she will receive the RSDI benefit effective September 25, 2019.

When budgeting income for FAP purposes, the Department is required to consider the client's actual income and prospected income. BEM 505 (October 2017), p. 1. Budgetable income includes countable, available income for the benefit month being processed. BEM 505, p. 3. Available income is defined as income actually received or reasonably anticipated. BEM 505, p. 1. For non-child support income types, the Department must use income from the past 30 days to prospect income for the future unless a change is expected to be received in the benefit month which is the month an assistance benefit payment covers. BEM 505, p. 6.

When the Department reviewed Petitioner's eligibility, the Department was considering her eligibility for September 2019. Since Petitioner's letter from SSA indicates that Petitioner's RSDI benefit will begin September 25, 2019, Petitioner's RSDI benefit is reasonably anticipated in the benefit month and should be considered in determining Petitioner's FAP eligibility. Therefore, the Department's inclusion of the RSDI benefit was in accordance with Department policy and a complete review of the Department's FAP net income budget for Petitioner in September 2019 follows below.

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, 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. For income received on a weekly basis, it is averaged and multiplied by 4.3. *Id.* For income received biweekly, it is averaged and multiplied by 2.15. *Id.* Finally, for income received twice monthly, the income is added together. *Id.*

As discussed above, Petitioner will begin receiving an RSDI benefit in September 2019. Since the RSDI benefit is reasonably anticipated in September 2019 and September 2019 is the month for which eligibility is being determined, the Department should include the income in its calculation. No further calculation is required to standardize her income from RSDI.

In addition to Petitioner's RSDI benefit, she also receives self-employment income, UCB income, and earned income.

For self-employment income, countable income equals total proceeds minus allowable expenses of producing the income. BEM 502 (July 2017), p. 3. Total proceeds equal the amount of self-employment income before any deductions. *Id.* Allowable expenses are the higher of 25% of the total proceeds or actual expenses if the client chooses to

claim and verify the expenses. *Id.* Petitioner had the following income from self-employment:

June 18, 2019	████████
July 16, 2019	████████
July 30, 2019	████████

Again, the Department is required to consider the last 30 days of income in determining the budgetable amount but for self-employment income, the monthly gross income is budgeted based upon discussions with the client of what the client expects to receive on average per month. BEM 505, p. 7. No evidence was presented that Petitioner expected anything different from the verified income. Therefore, for the last 30 days, Petitioner had total income of ██████. After reducing Petitioner's income by 25% for allowable expenses because she did not provide proof of additional expenses, Petitioner's countable income is ██████.

For UCB income, the gross amount is counted as unearned income except in situations where the gross benefit is reduced because the client has earned income in which case the reduced benefit amount is the countable unearned income. BEM 503 (April 2019), p. 35. According to the Consolidated Inquiry provided by the Department and which Petitioner did not dispute, Petitioner's actual UCB is variable because of fluctuating income. Petitioner had the following UCB benefits:

June 15, 2019	████████
June 22, 2019	████████
June 29, 2019	████████
July 06, 2019	████████
July 13, 2019	████████
July 20, 2019	████████

As discussed above, the last 30 days of income is used to prospect Petitioner's standardized income. Therefore, Petitioner's UCB income from June 22, 2019 through July 20, 2019 is averaged and then multiplied by 4.3 because it is received on a weekly basis for a standardized monthly UCB income of ██████.

Finally, Petitioner had earned income from employment. During the hearing, the Department testified that it only budgeted income from Employer and not from Employer 2. However, the Consolidated Inquiry and verifications from Petitioner showed that Petitioner had employment income from Employer in addition to wages for Employer 2. The wage verifications from each Employer were submitted close in time to the Department's calculation of Petitioner's FAP eligibility. Therefore, both sources of income will be considered here.

Petitioner had the following wages from Employer:

June 14, 2019	\$ [REDACTED]
June 28, 2019	\$ [REDACTED]
July 12, 2019	[REDACTED]
July 26, 2019	[REDACTED]

Since the last 30 days of income is considered, Petitioner's average income was [REDACTED] and her standardized monthly income is [REDACTED] because her income is received on a bi-weekly basis.

Petitioner had the following wages from Employer 2:

July 15, 2019	[REDACTED]
July 29, 2019	[REDACTED]

Therefore, Petitioner's average income is [REDACTED] and her standardized monthly income is [REDACTED] because her income is received on a bi-weekly basis.

After consideration of all sources of Petitioner's income, Petitioner has a total gross monthly income of \$[REDACTED] (dropping the cents). Since Petitioner is a Senior, Disabled, or Disabled Veteran (SDV), the gross income limit does not apply to Petitioner. BEM 550 (January 2017), p. 1.

After consideration of income, the Department considers all appropriate deductions and expenses. Since Petitioner is an SDV group member, she is eligible for the following deductions to income:

- 20% Earned Income Deduction
- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical deduction.

BEM 554 (August 2017), p. 1; BEM 556 (April 2018), p. 3.

The Department budgeted [REDACTED] for child support, medical, and dependent care expenses. Petitioner did not dispute that she does not have these expenses. The Department also budgeted the standard deduction of \$158.00 for a group size of one in accordance with Department policy. RFT 255 (October 2018), p. 1. Finally, Petitioner had total earned income of \$[REDACTED] (UCB is considered unearned income under BEM 503); therefore, she receives a [REDACTED] earned income deduction. After consideration of all of these expenses and deductions, Petitioner's Adjusted Gross Income (AGI) is [REDACTED].

Once the Adjusted Gross Income is calculated, the Department must then consider the Excess Shelter Deduction. The Department budgeted and Petitioner did not dispute that she has a housing expense of [REDACTED] per month. In addition to the rental expense, the Department properly afforded Petitioner the Heat and Utility (H/U) standard of [REDACTED]. BEM 554, pp. 14-15; RFT 255, p. 1. Once the rental expense and H/U standard are added together, 50% of Petitioner's AGI is subtracted to achieve Petitioner's Excess Shelter Deduction. If the calculation results in a negative number, Petitioner is not eligible for the Excess Shelter Deduction because she does not have an excess shelter cost. Since after subtracting 50% of Petitioner's AGI results in a value of negative [REDACTED], Petitioner does not have an excess shelter cost. Therefore, Petitioner's AGI of [REDACTED] is the same as her Net Income. The Net Income Limit for a group size of one is \$[REDACTED]. RFT 250 (October 2018), p. 1. The Department properly closed Petitioner's FAP case effective September 1, 2019 based upon excess income.

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 effective September 1, 2019.

DECISION AND ORDER

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

The Department's decision is **AFFIRMED** as it relates to the closure of her **FAP** benefits.

AM/tm



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

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CC:

[REDACTED]
[REDACTED]
[REDACTED]