



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: July 11, 2019
MOAHR Docket No.: 19-006103
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 July 8, 2019, from Detroit, Michigan. Petitioner was present with her fiancé, [REDACTED]. The Department of Health and Human Services (Department) was represented by Brenda Drewnicki, Hearing Facilitator.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit amount?

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 was an ongoing FAP recipient.
2. In March 2019, Petitioner completed a redetermination related to her FAP benefit case.
3. Petitioner had income from employment (Exhibit A, p. 6).
4. Petitioner had income from self-employment (Exhibit A, p. 7).
5. On March 6, 2019, the Department sent Petitioner a Notice of Case Action (NOCA) informing her that she was approved for FAP benefits in the monthly amount of \$15 effective April 1, 2019, ongoing (Exhibit A, pp. 4-5).

6. On [REDACTED], 2019, Petitioner submitted a request for hearing disputing the Department's actions.

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 completed a redetermination related to her FAP benefit case in March 2019. As a result, the Department redetermined Petitioner's FAP eligibility. On March 6, 2019, the Department sent Petitioner a NOCA informing her that she was eligible for FAP benefits in the monthly amount of \$15. The Department submitted a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, pp. 10-11).

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. Individuals who run their own businesses are self-employed. BEM 502 (July 2017), p. 1. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. BEM 502, p. 1. The amount of self-employment income before any deductions is called total proceeds. BEM 502, p. 3. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. Allowable expenses (except MAGI related MA) are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3. BEM 502 provides a list of expenses that are allowed when determining self-employment countable income, pp. 3-4.

According to the budget provided, the Department calculated Petitioner's standard monthly self-employment income to be \$900 per month. The Department testified that \$1,200 in self-employment income was included in Petitioner's FAP budget. With the reduction of 25% for allowable expenses, it results in a standard monthly amount of \$900. The Department presented income receipts submitted by Petitioner to verify her self-employment income (Exhibit A, pp. 7-8). The receipts show that Petitioner was paid on February 1, 2019, in the gross amount of \$195; February 8, 2019, in the amount of

\$200; February 15, 2019, in the amount of \$200; February 22, 2019, in the amount of \$200; and February 23, 2019, in the gross amount of \$200.

Petitioner testified that prior to February 2019, she received \$150 in self-employment income per week working as a home health aide. Petitioner stated that she was paid additional self-employment income in February 2019, as she was no longer going to be caring for the client in March 2019. Petitioner testified that the additional income that she received was akin to severance pay. Petitioner stated that her last day of work was February 28, 2019.

It is unclear as to why the Department utilized the \$1,200 figure to calculate Petitioner's self-employment income. The Department testified that per case comments, Petitioner stated in her interview that her self-employment income was \$1,300 per month. Petitioner denied making that statement. Per Petitioner's own testimony at the hearing, her self-employment income was generally \$600 per month. When adding together the receipts, it results in a total amount of \$995. The Department provided no evidence as to how it obtained the \$1,200 figure. Therefore, the Department failed to establish that it properly calculated Petitioner's self-employment income. As it follows, the Department failed to establish that it properly calculated Petitioner's FAP benefit amount.

DECISION AND ORDER

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's FAP benefit amount.


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. Redetermine Petitioner's FAP eligibility as of April 1, 2019, ongoing;
2. If Petitioner is eligible for additional FAP benefits, issue supplements she is entitled to receive; and

3. Notify Petitioner of its decision in writing.

EM/cg



Ellen McLemore
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

Via Email:

MDHHS-Macomb-12- Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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