



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: February 14, 2020  
MOAHR Docket No.: 20-000244  
Agency No.: [REDACTED]  
Petitioner: Anissa Durr

**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 February 10, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearing Facilitator.

**ISSUE**

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

Did the Department properly deny Petitioner's Family Independence Program (FIP) benefit application?

**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 September 24, 2019, Petitioner submitted an application for FAP benefits.
2. Petitioner's household consisted of herself and her four children.
3. Petitioner had income from employment at the time of the FAP application (Exhibit A, pp. 20-23).

4. On October 16, 2019, the Department sent Petitioner a Notice of Case Action informing Petitioner that she was approved for FAP benefits in the amount of \$233 effective October 1, 2019, ongoing (Exhibit A, pp. 31-37).
5. On October 28, 2019, Petitioner submitted an application for FIP benefits.
6. On October 28, 2019, the Department sent Petitioner a PATH Appointment Notice informing her that she had to attend orientation on November 4, 2019 (Exhibit A, p. 6).
7. On November 7, 2019, the Department sent Petitioner a PATH Appointment Notice informing her that she had to attend orientation on November 12, 2019 (Exhibit A, p. 7).
8. On November 19, 2019, the Department sent Petitioner a Notice of Case Action informing Petitioner that her FIP application was denied (Exhibit A, pp. 9-14). The notice also stated Petitioner's FAP benefit amount was increasing to \$768 per month effective January 1, 2020, ongoing.
9. On [REDACTED], 2020, Petitioner submitted a request for hearing disputing the Department's actions related to her FIP and FAP benefit 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).

#### **FIP**

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

In this case, Petitioner submitted an application for FIP benefits on October 28, 2019. On October 28, 2019, the Department sent Petitioner a PATH Appointment Notice informing her that she was scheduled to attend orientation on November 4, 2019.

All Work Eligibility Individuals (WEI), unless temporarily deferred, must engage in employment that pays at least state minimum wage or participate in employment services. BEM 230A (October 2015), p. 4. Applicants must complete the 21-day Partnership. Accountability. Training. Hope (PATH) application eligibility period (AEP)

part of orientation, which is an eligibility requirement for approval of the FIP application. BEM 229 (October 2015) p. 1. PATH participants must complete all of the following in order for their FIP application to be approved: (i) begin the AEP by the last date to attend as indicated on the DHS-4785, PATH Appointment Notice; (ii) complete PATH AEP requirements; and (iii) continue to participate in PATH after completion of the 21 day AEP. BEM 229, p. 1. Included as conditions of eligibility are the requirement to appear and participate with PATH or other employment services providers and the completion of the Family Automated Screening Tool (FAST). BEM 233A (April 2016), p. 1. The Department will deny the FIP application if an applicant does not complete all of the above three components of the AEP. BEM 229, p. 1.

The Department testified that Petitioner did not attend her PATH orientation appointment on November 4, 2019. Petitioner contacted her worker on November 5, 2019 and stated she had just received the PATH Appointment Notice on November 4, 2019. Petitioner requested to reschedule her PATH orientation. The Department sent Petitioner a second PATH Appointment Notice on November 7, 2019, informing her that her orientation was scheduled on November 12, 2019. Petitioner did not attend her PATH orientation. As a result, the Department denied Petitioner's FIP application.

Petitioner testified that she did not receive the second PATH Appointment Notice until the day of the orientation. Petitioner stated she was unable to attend the orientation due to receiving the notice untimely.

The Department sent Petitioner notice of her PATH orientation, as required by policy. Petitioner did not attend the PATH orientation within the required timeframe. Therefore, the Department acted in accordance with policy when it denied Petitioner's application for FIP benefits.

## **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 submitted an application for FAP benefits on September 24, 2019. The Department sent Petitioner notice on October 16, 2019, informing her that she was approved for FAP benefits in the monthly amount of \$233 effective October 1, 2019, ongoing. The Department increased Petitioner's FAP benefits to \$768 effective January 1, 2020. Petitioner stated she was only disputing her FAP benefit amount of \$233 between October 1, 2019 and December 31, 2019. The Department presented the October 16, 2019 Notice of Case Action with Petitioner's FAP budget summary to establish the calculation of Petitioner's benefit amount of \$233 (Exhibit A, p. 32).

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), pp. 1-2. 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. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. BEM 505, pp. 7-9. Income received weekly is multiplied by a 4.3 multiplier. BEM 505, pp. 7-9. Income received twice per month is added together. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (October 2019), pp. 6-7.

The Department included earned income in the amount of \$2,032 in Petitioner's FAP budget. The Department presented Petitioner's Work Number report showing she was paid on September 5, 2019, in the gross amount of \$1,205.10 and on September 19, 2019, in the gross amount of \$865.20. Petitioner was paid biweekly. When averaging the two figures and multiplying the 2.15 multiplier, it results in a standard monthly income of \$2,032.

Petitioner argued at the hearing that the Department erred when it continued to budget earned income when determining her FAP benefit amount after October 2019, as she had lost her employment on September 17, 2019. The Department testified that it continued to budget the earned income because Petitioner failed to properly verify the loss of employment. The Department presented a Verification Checklist (VCL) sent to Petitioner on October 28, 2019, requesting verification of the loss of employment (Exhibit A, pp. 15-16). Proofs were due by November 7, 2019.

The Department is required to remove stopped income from the budget for future months. BEM 505 (April 2017), p. 8. However, the Department must verify income changes that result in a benefit increase or when change information is unclear, inconsistent or questionable BEM 505, p. 14. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. For FAP cases, the Department allows the client 10 calendar days to provide the verification that is required. BAM 130, p. 7.

Petitioner stated she emailed her worker on October 16, 2019, informing her that she had lost her employment. However, Petitioner was unsure as to whether she submitted verification of the loss of employment. The Department testified that Petitioner did not submit verification of the loss of employment. Therefore, the Department acted in

accordance with policy when it continued to include the employment income in Petitioner's FAP budget.

The Department also included \$359 in unearned income in the form of child support. When calculating child support income, the Department uses the monthly average of the child support payments received in the past three calendar months, unless changes are expected. BEM 505, p. 4. If there are known changes that will affect the amount of the payments in the future, the Department will not use the previous three months. BEM 505, p. 4. If the past three months' child support is not a good indicator of future payments, the Department will calculate an expected monthly amount for the benefit month based on available information and discussion with the client. BEM 505, p. 5.

The Department presented Petitioner's consolidated inquiry report (Exhibit A, pp. 38-43). The report shows that for child number one, Petitioner received child support in July 2019, in the amount of \$154.27; in August 2019, in the amount of \$101.11; and September 2019, in the amount of \$53.94. For Petitioner's child number two, she received \$151.04 in July 2019; \$129.73 in August 2019; and \$129.73 in September 2019. For Petitioner's child number three, she received \$99.82 in July 2019; \$93.75 in August 2019; and \$93.75 in September 2019. When averaging the child support for all three children, it results in a standard monthly amount of \$335.71. It is unclear how the Department obtained the \$359 figure. Therefore, the Department failed to establish that it properly calculated Petitioner's child support income. As it follows, the Department failed to establish it properly determined 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 acted in accordance with Department policy when it denied Petitioner's FIP application. The Department did not act in accordance with policy when it determined Petitioner's FAP benefit amount.

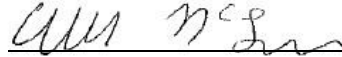
Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's FIP benefit case and **REVERSED IN PART** with respect to Petitioner's FAP benefit case.

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 between October 1, 2019 and December 31, 2019;
2. If Petitioner is eligible for additional FAP benefits, issue supplements she is entitled to receive; and

3. Notify Petitioner of its FAP decision in writing.

EM/cg



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**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-Wayne-19-Hearings  
B. Sanborn  
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