



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: March 17, 2020
MOAHR Docket No.: 20-000677
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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, an in-person hearing was held on March 11, 2020 in Detroit, Michigan. Petitioner appeared and was represented by her attorney, [REDACTED]. The Department of Health and Human Services (Department) was represented by Candice Benns, Hearings Facilitator, Phyllis Bell, Family Independence Specialist, and Michael Fritz, Family Independence Manager. During the hearing, a 40-page packet of documents was offered and admitted as Exhibit A, and a one-page document was offered and admitted as Exhibit 1.

ISSUE

Did the Department properly determine Petitioner's eligibility for Family Independence Program (FIP) cash assistance upon processing her [REDACTED] 2019 application?

Did the Department properly determine Petitioner's eligibility for Food Assistance Program (FAP) benefits upon processing her [REDACTED] 2019 application?

Did the Department properly determine Petitioner's eligibility for Medicaid (MA) benefits, effective [REDACTED], 2020, ongoing?

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 income consists of \$ [REDACTED] per month in RSDI. Of that amount, \$ [REDACTED] is withheld each month to repay a previous overpayment. There is no evidence on the record that the overpayment was the result of fraud. Exhibit 1.
2. In [REDACTED] 2019, Petitioner's minor grandchild came to live with Petitioner. The child's mother had granted Petitioner power of attorney over the child, and the child was living full-time with Petitioner from August 2019 through the date of the hearing.
3. On [REDACTED], 2019, Petitioner submitted to the Department an application for FIP, FAP, and MA benefits. Therein, Petitioner asserted that she was the primary caretaker of the minor child. Exhibit A.
4. On [REDACTED], 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that she was eligible for FIP benefits, effective [REDACTED] 2019. The notice further informed Petitioner that she was eligible for FAP benefits, effective [REDACTED], 2019, ongoing, for a household of one. The child was not included in the household for the purposes of determining FAP eligibility. Exhibit A.
5. On [REDACTED], 2020, the Department issued to Petitioner a Notice of Case Action informing Petitioner that she was eligible for FIP benefits, effective [REDACTED] 1, 2020, ongoing. However, the notice informed Petitioner that she was not eligible for FIP benefits for the period from October 16, 2019 through January 31, 2020. Exhibit A.
6. On [REDACTED], 2020, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was not eligible for MA benefits, effective [REDACTED], 2020, because the Department determined that her income exceeded the limit for program eligibility. The Department determined that Petitioner's annual income was \$ [REDACTED]. Petitioner was later found to be eligible for MA benefits, subject to a monthly deductible of \$ [REDACTED]. Again, the Department still based her eligibility off of an annual income determination of \$ [REDACTED]. Exhibit A.
7. On [REDACTED] 2020, Petitioner submitted to the Department a request for hearing objecting to the Department's determination of her FIP, FAP, and MA 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 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.

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.

The Medical Assistance (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.

In this case, Petitioner submitted to the Department a request for hearing objecting to the Department's processing of her [REDACTED], 2019 application for FIP, FAP, MA benefits. Petitioner has two main objections, both of which are sustained in this matter. First, Petitioner objected to the Department's refusal to determine her household's benefits with consideration of her grandchild being in the home. Second, Petitioner objected to the Department's refusal to exclude from her gross income calculation the amount of monies withheld by the Social Security Administration from a previous overpayment from Petitioner's monthly RSDI award.

FAILURE TO ADD GRANDCHILD TO CASE

FIP cash assistance is a program designed to help individuals and families become self-sufficient. BEM 209 (July 2017), p. 1. Cash assistance is available to an eligibility determination group (EDG) that meets all of the non-financial and financial requirements. BEM 209, p. 1. An EDG consists of those individuals living together whose information is needed to determine FIP eligibility. BEM 210 (April 2017), p. 2. When an individual applies for cash assistance, a determination is made regarding the makeup of the EDG for the program. BEM 209, p. 1. To be eligible for FIP cash assistance, the EDG must include a dependent child who lives with a legal parent, stepparent, or other qualifying caretaker while not including an adult who has been time-limited out of program eligibility. BEM 210, p. 1. Mandatory EDG members include all dependent children and their legal parents who are living together. BEM 210, p. 5. However, due to Petitioner's relationship to the two children, Petitioner would not be included in the FIP group. BEM 210, pp. 4-7.

Only a primary caretaker can receive FIP cash assistance for a child. BEM 210, p. 10. A primary caretaker is defined as 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 the days in a month. BEM 210, p. 9. If the child sleeps in the home of multiple caretakers an equal number of days in a month, the caretaker who applies and is eligible first is the primary caretaker for that program. BEM 210, p. 10. Notably, it is possible to have a different primary caretaker for different programs. BEM 210, p. 11. A dependent child is defined as an unemancipated child who lives with a caretaker and is under the age of 18 or age 18 and a full-time high school student. BEM 210, p. 2.

Group size is relevant to the determination of an applicant's FAP benefit allotment; all else being equal, the more members in a group, the greater the allotment. RFT 260 (October 2018). People who live together and purchase and prepare food together are members of the same FAP group. BEM 212 (January 2017), p. 1. A person acting as a parent and the child or children for whom he or she acts as a parent who live with him or her must be in the same FAP group. BEM 212, p. 2.

Petitioner's FIP case was denied from the date of application through [REDACTED] 2020, and Petitioner FAP benefits were determined upon the basis of Petitioner being the only person in the home. Both actions were premised upon the Department's determination that Petitioner's grandchild was living with the mother, not Petitioner. Had the Department done an investigation or reviewed the documentation provided, it would have been clear that at the time the [REDACTED] 2019 application was filed, the household included Petitioner and Petitioner's grandchild. Because the Department failed to determine Petitioner's eligibility for both programs on the basis of the correct household makeup, the Department's decisions are reversed.

COUNTABLE INCOME DETERMINATION

The Department determined that Petitioner's annual countable income totaled \$[REDACTED]. That determination was based off Petitioner receiving \$[REDACTED] per month in RSDI from the Social Security Administration. Annualized, that comes out to \$[REDACTED] per year. Petitioner argued that the Department was required to exclude from gross income the [REDACTED] per month the Social Security Administration withheld to repay a previous overpayment.

Eligibility for most programs is based off an individual's gross income, which is the amount of income before any deductions such as taxes or garnishments. BEM 500 (July 2017), p. 4. However, amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income, unless the overpayment was due to fraud; these amounts are excluded as income. BEM 500, p. 6.

The Department counted the entire amount of [REDACTED] per month that Petitioner was awarded from the Social Security Administration. However, that amount should have been reduced by the \$[REDACTED] that was being withheld to repay a previous overpayment as

there was no evidence that the overpayment was the result of fraud. Accordingly, the Department failed to properly determine Petitioner's benefits because it used an improperly inflated income number. Petitioner's true income should have been reduced by [REDACTED] per month.

CONCLUSION

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 processed Petitioner's September 20, 2019 application for FIP, FAP, and MA benefits.


DECISION AND ORDER

Accordingly, the Department's decisions are **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. Reprocess Petitioner's [REDACTED], 2019 application for MA, FIP, and FAP benefits from the date of application;
2. Determine Petitioner's eligibility for each program on the basis of her having a household that includes herself and her grandchild and her having unearned income of \$[REDACTED] per month;
3. If Petitioner is eligible for any additional benefits, ensure that prompt supplements are issued; and
4. Notify Petitioner in writing of its decisions.

JM/tm



John Markey
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

Deborah Little
5131 Grand River Ave.
Detroit, MI
48208

Petitioner

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

Counsel for Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

cc: FIP: B. Sanborn; M. Schoch
ME—D. Smith; EQADHShearings
FAP: M. Holden; D. Sweeney
AP Specialist-Wayne County