



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: June 25, 2020
MOAHR Docket No.: 20-003078
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 June 18, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Sandra Dinkins, Eligibility Specialist.

ISSUE

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

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 [REDACTED], 2020, Petitioner submitted an application for FAP benefits.
2. Petitioner's household consisted solely of herself.
3. Petitioner had unearned income in the form of Retirement, Survivors and Disability Insurance (RSDI) benefits in the gross monthly amount of \$1005.60 (Exhibit A, pp. 6-8).
4. Petitioner had unearned income in the form of child support in the gross monthly amount of \$300 (Exhibit A, p. 10).

5. On April 6, 2020, the Department sent Petitioner a Notice of Case Action informing her that she was approved for FAP benefits in the gross monthly amount of \$16 (Exhibit A, pp. 16-20).
6. On April 15, 2020, 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 submitted an application for FAP benefits on [REDACTED], 2020. The Department determined that Petitioner was eligible for FAP benefits in the amount of \$16 per month. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, pp. 14-15).

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. For RSDI, the Department counts the gross benefit amount as unearned income. BEM 503 (January 2020), p. 28. 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 (October 2017), 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.

Per the budget provided, the Department included \$1,305 in unearned income when determining Petitioner's FAP benefit amount. The Department provided Petitioner's State Online Query (SOLQ) report showing she receives RSDI benefits in the gross monthly amount of \$1005.60. The Department also provided Petitioner's Consolidated Inquiry report showing that she receives \$300 per month in child support income.

At the hearing, Petitioner testified that her son is an adult and is still receiving child support in arrearage. Petitioner stated that her son does not live in her household. Petitioner testified that her son is in possession of the debit card on which the child support funds are deposited. Petitioner stated she does not receive any of the child support income and it is forwarded to her son in its entirety.

Child support payments, including arrearage payments, received by a custodial party for an adult child or a child no longer living in the home, are considered the other unearned income of the payee if the money is not forwarded to the adult child or child. BEM 503, p. 6. If the money is forwarded to the adult child or child, it is the other unearned income of the adult child or child. BEM 503, p. 6.

Petitioner gave credible testimony that she forwards the child support income to her adult son, who is no longer living in her home. Per policy, the child support income is Petitioner's son's unearned income. Therefore, the Department did not follow policy when it included the child support income in Petitioner's FAP budget. As it follows, the Department did not act in accordance with policy when it determined Petitioner's FAP eligibility.

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 did not act in accordance with Department policy when it determined Petitioner's FAP eligibility.

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 the [REDACTED], 2020 application;
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/tm



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.

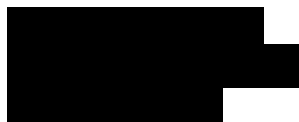
If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Dora Allen
14061 Lappin
Detroit, MI 48205

Petitioner



cc: FAP: M. Holden; D. Sweeney
AP Specialist-Wayne County