



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] MI [REDACTED]

Date Mailed: September 25, 2020
MOAHR Docket No.: 20-005304
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 17, 2020. [REDACTED], the Petitioner, appeared on his own behalf. The Department of Health and Human Services (Department), was represented Brad Reno, Eligibility Specialist and Hearing Facilitator (HF).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-41.

ISSUE

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

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 July 23, 2019, the Department issued a Notice of Case Action stating that FAP was approved for a household size of four ([REDACTED] and Petitioner) for the months of June and July 2019 and was approved for a household size of three ([REDACTED] and Petitioner) for August 1, 2019, through May 31, 2020. (Exhibit A, pp. 12-16)
2. Data exchange with the Social Security Administration indicated that as of December 1, 2019, there were RSDI benefits for [REDACTED] in the amount of \$336.00 per month each. Petitioner's gross RSDI benefit amount was \$1,347.00. (Exhibit A, pp. 17-25)

3. On July 28, 2020, the Department issued a Notice of Case Action stating Petitioner's FAP case for himself, [REDACTED] and [REDACTED] would close effective August 1, 2020, because the net income exceeds the limit. (Exhibit A, pp. 26-30)
4. On August 10, 2020, Petitioner filed a hearing request contesting the Department's determination. (Exhibit A, pp. 7-8)

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.

BEM 550 addresses FAP income budgeting. In part, this policy states:

A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits.

A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits.

Use only available, countable income to determine eligibility. The Bridges Eligibility Manual (BEM) 500 series defines countable income. BEM 505 defines available income and income change processing. This item describes income budgeting policy.

Always calculate income on a calendar month basis to determine eligibility and benefit amounts. Use income from a month specified in this item for the benefit month being considered.

Budget the entire amount of earned and unearned countable income. Gross countable earned income is reduced by a 20 percent earned income deduction. Every case is allowed the standard deduction shown in Reference Tables Manual (RFT) 255.

Document income budgeting on either a manually-calculated or an automated FAP worksheet.

BEM 550, January 1, 2017, p. 1.
(Underline added by ALJ)

BEM 212 addresses FAP group composition and indicates parents and their children under 22 years of age who live together must be in the same group. (BEM 212, July 1, 2019, p. 1)

Effective October 1, 2019, for a group size of three, the FAP monthly gross income limit is \$2,311.00 and the net income limit is \$1,778.00. RFT 250, October 1, 2019, p. 1.

Petitioner's FAP group size is three. The FAP group size was reduced to three effective August 1, 2019. (Exhibit A, pp. 12-16) A change report submitted after the hearing request was filed indicated [REDACTED] returned to the home. (Exhibit A, pp. 31-32) The H.F. explained that [REDACTED] is active on her own FAP case. Accordingly, no action was taken on this reported change. (Exhibit A, pp. 3-4; H.F. Testimony) Further, Petitioner's testimony acknowledged that [REDACTED] does not really live in the home. (Petitioner Testimony)

It is unclear how the original FAP budget for the benefit period starting August 1, 2020, calculated the group's countable unearned income as \$2,079.00. (Exhibit A, p. 38) This calculation led to the determination that Petitioner's FAP group had a net income of \$1,918.00, which exceeded the applicable limit of \$1,778.00. (Exhibit A, pp. 38-39) However, the Department corrected this budget to reflect the RSDI benefit amounts shown on the data exchange with the Social Security Administration. The total countable income is actually \$2,019.00 (\$1,347.00 for Petitioner; \$336.00 for [REDACTED] \$336.00 for [REDACTED]) After subtracting the standard deduction, the FAP group's net income is actually \$1,858.00. (Exhibit A, pp. 17-25 and 38-39) However, the corrected net income amount of \$1,858 still exceeds the net income limit of \$1,778.00.

Petitioner's testimony indicated his RSDI benefit is slightly less, about \$1,256.00. Petitioner indicated an insurance premium is being deducted. (Petitioner Testimony) it is noted that BEM 503, July 1, 2020, p. 29 states that the gross benefit amount is counted as unearned income.

Petitioner's hearing request explained that he is disabled and is a single father. Petitioner's hearing request and testimony addressed their need for the FAP benefit and several other monthly and/or recurring expenses, including some medical expenses. (Exhibit A, p. 8; Petitioner Testimony) While medical expenses were not included in the FAP budget, it is unclear when Petitioner's medical expenses were first reported to the Department. Petitioner thought the Department had been aware of his medical expenses for some time. Petitioner's medical expenses include insurance premiums, co-pays, and mileage for traveling to medical appointments. Further, Petitioner indicated that at one point the state covered his Medicare Part B premium, but that stopped for at

least some period. (Petitioner Testimony) The HF indicated Petitioner's case record showed the Department was notified of Medicare Parts C and D premiums on September 1, 2020. (HF Testimony) However, it is noted that even after an expense is reported, Department policy also requires verification of allowable medical expenses. See BEM 554, July 1, 2020, pp. 8-12.

Lastly, the July 28, 2020, Notice of Case Action stated Petitioner's FAP case would close effective August 1, 2020. (Exhibit A, pp. 26-30) This did not provide timely notice, i.e. a notice mailed at least 11 days before the intended negative action takes effect. Timely notice is to be given unless policy specifies adequate notice or no notice. See BAM 220, July 1, 2020, p. 5. The available information does not indicate the proposed closure of Petitioner's FAP case would require adequate notice or no notice pursuant to the BAM 220 policy. The HF was not sure why the normal timely notice period was not given but noted that the notice was issued through an update rather than by a Department worker. (HF Testimony)

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 issued the July 28, 2020, Notice of Case Action stating Petitioner's FAP case would close effective August 1, 2020.

DECISION AND ORDER

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 eligibility for FAP retroactive to the August 1, 2020, effective date in accordance with Department policy.
2. Issue written notice of the determination in accordance with Department policy.
3. Supplement for lost benefits (if any) that Petitioner was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.

CL/ml



Colleen Lack
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

Tamara Morris
Genesee (Union St.) County DHHS – via
electronic mail

BSC2 – via electronic mail

M. Holden – via electronic mail

D. Sweeney – via electronic mail

Authorized Hearing Rep.

Christy Manchester – via first class mail
9350 Torrey Rd.
Grand Blanc, MI 48439

Petitioner

██████████ – via first class mail
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