



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: January 22, 2021
MOAHR Docket No.: 20-007238
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 January 19, 2021. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Ebony Ingram, Eligibility Specialist.

ISSUE

Did the Department properly deny Petitioner's Food Assistance Program (FAP) 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 [REDACTED] 2020, the Department received Petitioner's Application for FAP for herself and her sister indicating that there was earned and unearned income in the household, as well as expenses including utilities, rent, and medical expenses.
2. On [REDACTED] 2020, the Department and Petitioner completed an Application interview confirming the earned and unearned income, rent, and utilities.
3. At some point, the Department received verification of Petitioner's wages from employment showing the following earnings:

October 9, 2020 \$597.98

October 16, 2020 \$464.36
October 23, 2020 \$276.68

4. The Department also reviewed a Consolidated Inquiry showing Petitioner's Unemployment Compensation Benefit (UCB) income of the following:

<u>Pay Date</u>	<u>Gross Benefit</u>	<u>Benefit After Earnings Reduction</u>
September 5, 2020	\$650.00	\$151.81
October 3, 2020	\$325.00	\$188.00
October 17, 2020	\$650.00	\$352.00

5. The Department received verification of Petitioner's housing expense showing the following:

Rent	\$840.00
LeaseLock Monthly Charge	\$39.00
Water	\$20.00
Gas	\$15.00
Pest Fee	\$5.00
Trash	\$5.00
Service Fee	\$3.25
Total Amount	\$927.25

6. At some point, the Department notified Petitioner that her FAP Application had been denied due to excess gross income.
7. On November 8, 2020, Petitioner submitted a Request for Hearing disputing the Department's decision to deny her FAP Application.

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 disputes the Department's denial of her FAP Application dated [REDACTED] 2020.

All FAP groups which do not contain a Senior, Disabled, or Disabled Veteran (SDV) group member must have income below the Gross Income Limit and the Net Income Limit. BEM 550 (October 2020), p. 1. Neither Petitioner nor her sister are SDV group members; therefore, they must have income below both limits to qualify for FAP. At the time of Petitioner's Application, the Gross Income Limit for a group size of two was \$2,874.00 and the Net Income Limit was \$1,437.00. RFT 250 (October 2020), p. 1.

All countable, gross earned and unearned income available to the group must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (July 2020), 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), p. 1. 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. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Income received on a weekly basis is multiplied by 4.3 to determine a standard monthly amount. BEM 505, p. 8 Income received bi-weekly is averaged and multiplied by 2.15 to achieve the standardized monthly income. *Id.* Finally, income received twice per month is added together. *Id.*

At the time of Application, Petitioner was employed and receiving an underemployment benefit. Her sister was receiving a Pandemic Emergency Unemployment Compensation (PEUC) benefit.

At the hearing, Petitioner testified that the weekly wage verifications used by the Department to determine her eligibility were an accurate representation of her wages after her hours were reduced. Petitioner's earnings were \$597.98, \$464.36, and \$276.68 received in their respective weeks. When Petitioner's earnings are averaged and then multiplied by 4.3, her standardized monthly income is \$1,919.26.

Petitioner also had underemployment Unemployment Compensation Benefit (UCB) income. Ordinarily, the gross amount of UCB income is considered; however, when benefits are reduced because the client has earnings, the reduced UCB is the gross amount that is budgeted. BEM 503 (September 2020), p. 38. Since Petitioner had earnings, her UCB was reduced to \$151.81 and \$188.00 in the month of October. UCB is paid on a bi-weekly basis. Therefore, to standardize her UCB income, the amounts are averaged and multiplied by 2.15 for a standardized income of \$365.29.

Finally, Petitioner's sister received \$160.00 in bi-weekly PUA; therefore, her standardized income is \$344.00.

Adding together each source of income, the group has a standardized gross monthly income of \$2,628.55. Petitioner's group's income is below the FAP gross income limit for a group size of two.

Since the Department presented additional evidence regarding the budgeting of Petitioner's expenses even though the Department testified Petitioner was denied because she was over the gross income limit, the remainder of the evidence will be reviewed for purposes of thoroughness.

After consideration of income, the Department considers all appropriate deductions and expenses. Petitioner's group does not include a Senior, Disabled, or disabled Veteran (SDV) group member; therefore, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter deduction up to the maximum of \$586.00.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- 20% earned income deduction.

BEM 550 (January 2017), pp. 1-1; BEM 554 (August 2020), p. 1; BEM 556 (January 2020), pp. 3-6.

As discussed above, Petitioner has standardized gross income of \$1,919.26. Therefore, she is eligible for a 20% earned income deduction of \$383.86. Petitioner does not have a child support or dependent care expense and the Department properly budgeted \$0.00 for these items. In addition, Petitioner has a group size of two, so she is eligible for the standard deduction of \$167.00 and that was properly budgeted. RFT 255 (January 2020), p. 1; BEM 556, p. 4.

After consideration of each of these deductions, Petitioner's Adjusted Gross Income (AGI) would be calculated by subtracting each of these expenses from her gross income. Therefore, Petitioner's AGI is \$1,368.40

Once the AGI is calculated, the Department must then consider the Excess Shelter Deduction. BEM 554, p. 1; 7 CFR 273.9(d)(6). The Excess Shelter Deduction is calculated by adding Petitioner's Housing Costs to any of the applicable standard deductions and reducing this expense by half of Petitioner's AGI. BEM 556, pp. 4-7; 7 CFR 273.9(d)(6)(ii). Housing expenses include rent, mortgage, second mortgage, home equity loans, condo and maintenance fees, lot rent, other payments leading to the ownership of the home, property taxes, state and local assessments, and insurance on the structure of the home. BEM 554, p. 13-14. Utilities are addressed by the heat and utility standard deduction (H/U) which covers all heat and utility costs including cooling. BEM 554, p. 15. FAP groups that receive the H/U do not receive any other individual utility standard deductions including water, sewer, gas, trash, telephone, or non-heat electric. BEM 554, p. 15. Petitioner has a current rental expense of \$840.00 per month. She also has expenses charged by her landlord on a monthly basis and paid at the same time as the base \$840.00 for LeaseLock (\$39.00), Water (\$20.00), Gas (\$15.00), Pest (\$5.00), Trash (\$5.00), and Service Fees (\$3.25). The expense were itemized by her landlord but Petitioner is required to pay each expense each month otherwise she

faces potential eviction. In addition to these expenses, Petitioner also has an electric bill which covers her heating and cooling expenses. Since Petitioner's costs for water, gas, and trash are included in the H/U standard deduction, these costs cannot be considered as part of her total rental obligation. However, the remainder of the fees charged by her landlord and for which she is responsible each month otherwise she faces eviction should be included in her total monthly rental expense. Essentially, the landlord has merely broken down the cost of living in the property so that Petitioner may see how her monthly obligation is utilized rather than including it as one lump sum. If Petitioner had the option to pay or not pay for any of these items, then the itemized options would be excluded from consideration in her FAP budget as they could not properly be considered her rental obligation. Therefore, Petitioner's total rental obligation is \$887.25. In addition, Petitioner is eligible for the H/U. Effective October 1, 2019, the H/U was \$547.00. RFT 255 (October 2020), p. 1. The expenses outlined here are the only expenses considered for purposes of calculating the FAP budget and eligibility determination. Petitioner's total housing cost is \$1,434.25 which is reduced by 50% of Petitioner's AGI (\$684.20) resulting in an excess shelter cost of \$750.05. *Id.* Per policy, the maximum excess shelter deduction for non-SDV groups is \$586.00. RFT 255, p. 1; BEM 554, p. 1.

Next, the maximum excess shelter deduction is subtracted from Petitioner's AGI to achieve her Net Income of \$782.40. *Id.* Petitioner's Net Income is well below the Net Income Limit of \$1,437.00. RFT 250, p. 1.

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 denied Petitioner's FAP Application due to income exceeding the gross or net income limit.

DECISION AND ORDER

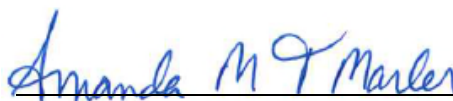
Accordingly, the Department's decision is **REVERSED**.

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. Reprocess Petitioner's [REDACTED] 2020 Application for FAP;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received effective October 29, 2020; and,

3. Notify Petitioner in writing of its decision.

AMTM/cc



Amanda M. T. Marler
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-20-Hearings
BSC4-HearingDecisions
D. Sweeney
M. Holden
MOAHR

Petitioner- Via USPS:

