



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 1, 2019
MAHS Docket No.: 18-013296
Agency No.: ██████████
Petitioner: ██████████

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, a telephone hearing was held on January 22, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. Also appearing on behalf of Petitioner was Petitioner's husband, ██████████. The Department of Health and Human Services (Department) was represented by Richkelle Curney, Eligibility Specialist. During the hearing, an 18-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-18.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefits, effective November 1, 2018?

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 was an ongoing recipient of FAP benefits for a group of five.
2. On September 4, 2018, the Department issued to Petitioner a Redetermination form to gather relevant information from Petitioner regarding Petitioner's ongoing eligibility for FAP benefits. Petitioner timely returned the completed Redetermination. On the Redetermination, Petitioner indicated that the household income for the FAP group was earned by her husband, ██████████, and consisted of \$██████████ every two weeks from ██████████ and \$██████████ every two weeks from ██████████). (Exhibit A, pp. 5-12.)

3. On November 6, 2018, [REDACTED] and [REDACTED] submitted to the Department forms that verified [REDACTED] employment with those entities. (Exhibit A, pp. 13-16.)
4. On November 29, 2018, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her monthly FAP benefits were \$234, effective November 1, 2018. The Notice of Case Action informed Petitioner that the Department determined that Petitioner's monthly earned income was \$2,444. (Exhibit A, pp. 17-18.)
5. On [REDACTED] 2018, Petitioner submitted to the Department a request for hearing objecting to the Department's calculation of Petitioner's monthly FAP 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 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 objects to the Department's calculation of her FAP group's monthly FAP benefits, effective November 1, 2018.

Petitioner's position is that the Department improperly inflated the group's income on Redetermination. On September 4, 2018, the Department issued to Petitioner a Redetermination form to gather relevant information from Petitioner regarding Petitioner's ongoing eligibility for FAP benefits. Petitioner timely returned the completed Redetermination. On the Redetermination, Petitioner indicated that the household income for the FAP group was earned by her husband, [REDACTED], and consisted of \$[REDACTED] every two weeks from [REDACTED] and \$[REDACTED] every two weeks from [REDACTED].

A few weeks later, each of those employers returned to the Department a Verification of Employment form. Those forms required the employers to provide the Department with [REDACTED] wage information from the last month. [REDACTED] provided the Department with information from paychecks [REDACTED] received on September 7, 2018, showing [REDACTED] worked 103.9 hours that pay period and September 21, 2018, showing [REDACTED] worked

16.8 hours that pay period. [REDACTED] provided the Department with information from paychecks [REDACTED] received on September 21, 2018, showing [REDACTED] worked 62.2 hours that pay period and October 5, 2018, showing [REDACTED] worked 62.9 hours that pay period.

In determining the group's monthly earned income, the Department used the information contained on the Verification of Employment forms rather than the information Petitioner provided on the Redetermination. At no point was Petitioner given the opportunity to verify the information he provided.

Periodically, the Department must redetermine or renew a client's eligibility for FAP benefits by the end of each benefit period. BAM 210 (January 2018), pp. 1, 3. The redetermination process includes thorough review of all eligibility factors, including income. BAM 210, p. 1. 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 (July 2017), pp. 6-7. Verification of income is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (April 2017), p. 1. Additionally, the Department must obtain verification when information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BAM 130, page 1.

The Department determined Petitioner's monthly earned income amount was \$[REDACTED]. It based the calculation on the paycheck information contained in the Verification of Employment forms returned by the two employers. In reviewing the Department's calculation of Petitioner's monthly earned income, it is found that the Department failed to follow Department policy because it failed to give Petitioner the opportunity to verify her income information. Instead, it took income from two sources from two slightly different time periods and improperly added them together, resulting in an inflated monthly income estimate.

During the hearing, [REDACTED] credibly testified that the two employers were essentially one entity and that he was shared amongst them. Thus, he only had one full-time job.

When the Department calculated Petitioner's household income to be substantially higher than what she stated on the Redetermination, the Department was required to give Petitioner the opportunity to verify the information she provided. By failing to allow Petitioner the opportunity to substantiate her assertions regarding group income, the Department failed to follow Department policy.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's monthly FAP benefits, effective November 1, 2018.

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 benefits, effective November 1, 2018;
2. If there are any discrepancies regarding eligibility related factors, follow Department policy with respect to allowing Petitioner the opportunity to verify her assertions;
3. If Petitioner is eligible for any additional FAP benefits, issue supplements to Petitioner;
4. Issue any verifications to Petitioner that may still be needed and ensure that the requests are clear as to what is being requested; and
5. Notify Petitioner in writing of its decision with respect to eligibility for FAP benefits.

JM/jaf



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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

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

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

DHHS

Tara Roland 82-17
MDHHS-Wayne-17-Hearings

Petitioner

[REDACTED]
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M Holden
D Sweeney