



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: April 23, 2019
MOAHR Docket No.: 19-002880
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 April 18, 2019, from Detroit, Michigan. Petitioner was present with her Living Together Partner (LTP), [REDACTED]. The Department of Health and Human Services (Department) was represented by Natalie McLauren, Hearing Facilitator.

ISSUE

1. Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit amount?
2. Did the Department properly close Petitioner's FAP benefit case?

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 FAP benefit recipient.
2. On March 4, 2019, Petitioner notified the Department of her new income from employment (Exhibit A).
3. On March 1, 2019, the Department sent Petitioner a Notice of Case Action (NOCA) informing her that her FAP benefits were being reduced to \$ [REDACTED] per month effective April 1, 2019, ongoing (Exhibit D).
4. On March 20, 2019, the Department sent Petitioner a NOCA informing her that her FAP benefit case was closing effective May 1, 2019, ongoing (Exhibit H).

5. On March 20, 2019, 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 a request for hearing, in part, to dispute the Department's calculation of her FAP benefits. Specifically, Petitioner alleged that the Department did not properly calculate her household income. The Department determined Petitioner was entitled to FAP benefits in the monthly amount of \$[REDACTED]. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit E).

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 2016), pp. 6-7.

The Department testified that Petitioner reported that she was working 20 hours per week at \$[REDACTED] per hour. Petitioner was paid biweekly. The Department multiplied Petitioner's hourly rate by 40 (the number of hours per pay period) and multiplied that

figure by the 2.15 multiplier. The Department determined Petitioner's standard monthly income was \$ [REDACTED] (Exhibit F), which is correctly calculated per policy. However, the Department testified that the income budgeted for Petitioner was \$ [REDACTED] which was the income amount that had been previously budgeted for Petitioner (Exhibit C). The Department could not explain why the \$ [REDACTED] figure was used.

The Department testified that it also budgeted \$ [REDACTED] for Petitioner's LTP's income at [REDACTED]. The Department stated that Petitioner did not report the income in her most recent redetermination that was completed in December 2018. The Department stated that the income was added because of a Wage Match report that was received.

Petitioner's LTP testified that he worked for [REDACTED] in the summer of 2018. Petitioner's LTP stated he has not been employed with [REDACTED] since August or September 2018. Petitioner stated she was not asked to verify her LTP's loss of employment until April 2019.

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (April 2017), p. 1. The Department requires income to be verified at (i) application; (ii) when a member is added to a group (iii) at redetermination; and (iv) when program policy requires a change be budgeted. BEM 500 (January 2016). To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. For FAP cases, the Department allows the client 10 calendar days to provide the verification that is required. BAM 130, p. 7.

The Department failed to establish that it sought proper verification regarding Petitioner's LTP's income, or lack thereof, before including the income in Petitioner's FAP budget. The income budgeted for Petitioner's LTP was inaccurate. Additionally, the Department acknowledged that it did not include the correct figure for Petitioner's income from employment in the FAP budget. Therefore, the Department did not act in accordance with policy when it determined Petitioner's household income. As it follows, the Department did not act in accordance with policy when it determined Petitioner's FAP benefit amount.

The Department testified that Petitioner stated that she desired to have her FAP benefit case closed. As a result, the Department sent Petitioner a NOCA on March 20, 2019, informing her that her FAP benefit case was closing effective May 1, 2019, ongoing. When a recipient requests case closure, the Department will enter the necessary information into their record keeping system and will certify eligibility results. BAM 220 (January 2019), p. 20. Petitioner stated that she informed the Department that she only desired to have her FAP benefit case closed if the Department continued to miscalculate her household income. Petitioner stated she did not make an outright request to have her FAP benefit case closed. Therefore, the Department did not act in accordance with policy when it closed Petitioner's FAP benefit case effective May 1, 2019, ongoing.

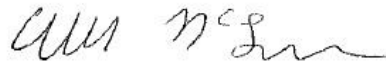
DECISION AND ORDER

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 April 1, 2019, ongoing;
2. If Petitioner is entitled to additional FAP benefits, issue supplements she is entitled to receive as of April 1, 2019, ongoing; and
3. Notify Petitioner of its decision in writing.



EM/

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

Kathleen Verdoni
MDHHS-Saginaw-Hearings

Department Representative

MDHHS-OCS-Hearings

Petitioner

[REDACTED]
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