



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]

Date Mailed: May 15, 2019
MOAHR Docket No.: 19-003692
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 May 9, 2019, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Julie McLaughlin, Hearing Facilitator; Kelly Curow, Family Independence Manager; and Amy Jeffrey, Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) and Family Independence Program (FIP) benefit cases?

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 and FIP recipient.
2. Petitioner's household consisted of herself and four children.
3. On February 14, 2019, Petitioner gained guardianship of two of the children in her household (Exhibit A, pp. 12-17).
4. In March 2019, Petitioner began receiving guardianship assistance in the gross monthly amount of \$828.64 on behalf of one child and \$676.54 on behalf of the second child (Exhibit A, p. 30).

5. Petitioner had income from employment.
6. Petitioner received child support for one of the children (Exhibit A, p. 31).
7. On March 12, 2019, the Department sent Petitioner a Notice of Case Action (NOCA) informing her that her FIP benefit case was closing effective April 1, 2019, ongoing (Exhibit A, pp. 10-11).
8. On March 31, 2019, Petitioner completed a redetermination related to her FAP benefit case (Exhibit A, pp. 18-25).
9. On [REDACTED], 2019, the Department sent Petitioner a NOCA informing her that her FAP benefit case was closing effective May 1, 2019, ongoing (Exhibit A, pp. 32-33).
10. 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).

FIP

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

In this case, Petitioner was an ongoing FIP recipient. On February 14, 2019, Petitioner obtained guardianship of two of the children living in her household. As a result, in March 2019, Petitioner began receiving guardianship assistance. The Department testified that due to the additional income, Petitioner was no longer eligible for FIP benefits because she exceeded the income limit for her group size. The Department presented a FIP budget to establish that Petitioner exceeded the income limit for the FIP program (Exhibit A, pp. 8-9).

To determine the amount of FIP benefits a client is eligible to receive, income received by the certified FIP group is subtracted from the payment standard, which is the maximum benefit amount that can be received by the certified group. BEM 515 (October 2018), p. 1; BEM 518 (October 2015), p. 1. The payment standard is dependent on the client's FIP certified group size. BEM 515, p. 3. In this case, the Department testified that there were four individuals in Petitioner's FIP group, in which

Petitioner was an ineligible grantee. BEM 210 (April 2017), p. 9. Based on a certified FIP group size of four with an ineligible grantee, the applicable payment standard is \$557. RFT 210 (April 2017), p. 1.

For ongoing FIP recipients, the Department applies the issuance deficit test to determine whether the client is eligible for FIP and the amount of the FIP grant. The issuance deficit test compares (i) the group's budgetable income for the income month decreased by the issuance earned income disregard to (ii) the certified group's payment standard for the benefit month, or, in this case, \$557. BEM 518, p. 4. The issuance earned income disregard reduces each person's countable earnings by \$200 and then by an additional 50% of the person's remaining earnings. BEM 518, p. 6. If the issuance deficit test results in no deficit or a deficit of less than \$10, the client is ineligible for FIP for the benefit month. BEM 518, p. 4.

As Petitioner was not a member of the FIP group, her earned income was not included in the FIP budget. BEM 210, pp. 1-2. According to the budget provided, the Department only included Petitioner's unearned income from the guardianship assistance in the amount of \$1,504. For FIP benefit cases, the Department includes funds from the Guardianship Assistance Program as unearned income. BEM 503 (January 2019), p. 19. The Department presented documentation to show that Petitioner receives guardianship assistance in the amount of \$828.64 and \$676.54 on behalf of the two children. Therefore, the Department properly calculated Petitioner's budgetable income.

As no earned income was included in the budget, Petitioner is not entitled to the earned income disregard. Petitioner's monthly household budgetable income of \$1,504 well exceeds the payment standard of \$557. Therefore, the Department acted in accordance with policy when it closed Petitioner's FIP benefit case.

FAP

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 completed a redetermination related to her FAP benefit case on March 31, 2019. As a result, the Department redetermined her FAP eligibility. The Department testified that Petitioner's FAP benefit case was closed due to the FAP group exceeding the net income limit. A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. BEM 550 (January 2017), p.1. Net income limitations are based on group size and are set forth in RFT 250. The Department presented a net income budget to establish Petitioner's group exceeded the net income limit (Exhibit A, pp. 34-36).

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), p. 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, p. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 8-9. Income received twice per month is added together. BEM 505, p. 8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. Income received weekly is converted to a standard amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. BEM 505, pp. 7-9.

The Department determined that Petitioner had \$[REDACTED] in earned income. The Department testified that pay statements submitted by Petitioner were used to calculate her income from employment. Petitioner was paid weekly and received a gross payment in the amount of \$[REDACTED] on March 8, 2019; \$[REDACTED] on March 15, 2019; \$[REDACTED] on March 22, 2019; and \$[REDACTED] on March 29, 2019. When averaging Petitioner's March 2019 payments and multiplying by the 4.3 multiplier, it results in a standard monthly earned income amount of \$[REDACTED]. Therefore, the Department properly calculated Petitioner's earned income.

The Department determined Petitioner had \$1,908 in household unearned income. As stated above, the Department presented evidence that Petitioner receives \$1,504 in unearned income from the Guardianship Assistance Program. For FAP benefit cases, funds from the Guardianship Assistance Program are also included as unearned income. BEM 503, p. 19. Therefore, the Department properly included the income in the FAP budget.

The Department also testified that it included \$404 of unearned income from child support. 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, 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.

The Department presented Petitioner's Child Support Consolidated Inquiry (Exhibit A, p. 31). The document shows that Petitioner received \$404 in child support in March 2019 for one of the children in her care. The Department testified that it did not include January and February child support information because the children were in foster care

and the State of Michigan was receiving the child support payments. However, at the hearing, the Department testified that the amount of child support paid on behalf of the child in January 2019 was \$235.40 and February 2019 was \$403. When averaging the amount of child support over 90 days, the standard monthly amount is \$347. Although the figure the Department used for Petitioner's child support income was incorrect, the error was harmless, as Petitioner still exceeds the net income limit utilizing the correct figure.

The deductions to income on the net income budget were also reviewed. There was no evidence presented that Petitioner's group includes a senior/disabled/veteran (SDV) household member. BEM 550 (October 2015), pp. 1-2. Thus, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (August 2017), p. 1; BEM 556 (April 2018), p. 3.

The Department will reduce the gross countable earned income by 20 percent and is known as the earned income deduction. BEM 550 (January 2017), p.1. The Department correctly determined Petitioner is entitled to an earned income deduction of \$296. Petitioner's FAP benefit group size of five justifies a standard deduction of \$198. RFT 255 (October 2018), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. Therefore, the budget properly excluded any deduction for dependent care or child support expenses.

In calculating the excess shelter deduction of \$0, the Department stated that it considered Petitioner's verified housing expense of \$350 and that she was entitled to the heat/utility standard of \$543. BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount, they added the total shelter amount and subtracted 50% of the adjusted gross income, which resulted in a deficit. Therefore, the Department correctly determined Petitioner was not entitled to an excess shelter deduction.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department determined Petitioner's adjusted gross income to be \$[REDACTED]. However, with the correct child support income, Petitioner's adjusted gross income was [REDACTED]. As Petitioner was not entitled to an excess shelter deduction, her net income is also \$[REDACTED]. The net income limit for a group of five is \$2,452. RFT 250 (October 2017), p. 1. Therefore, the Department acted in accordance with policy when it denied Petitioner's application for FAP benefits for exceeding the net income limits.

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 acted in accordance with Department policy when it closed Petitioner's FIP and FAP benefit cases. Accordingly, the Department's decisions are **AFFIRMED**.

EM/cg



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

Via Email:

MDHHS-Muskegon-Hearings
B. Sanborn
B. Cabanaw
M. Holden
D. Sweeney
BSC3- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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