



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: July 3, 2019
MOAHR Docket No.: 19-005676
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 July 1, 2019, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Alberta Frasier, Family Independence Specialist.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit amount?

Did the Department properly close Petitioner's Child Development and Care (CDC) 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 CDC benefit recipient.
2. On April 4, 2019, the Department sent Petitioner a redetermination related to her CDC benefit case (Exhibit A, pp. 10-17).
3. On [REDACTED] 2019, Petitioner submitted an application for FAP benefits.
4. Petitioner had income from employment (Exhibit A, p. 9).

5. On May 10, 2019, the Department sent Petitioner a Notice of Potential CDC Closure (Exhibit A, p. 8).
6. On May 10, 2019, the Department sent Petitioner a Notice of Case Action informing Petitioner that she was approved for \$71 for May 2019 and \$284 for June 1, 2019, ongoing (Exhibit A, pp. 4-6).
7. On [REDACTED], 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).

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 submitted a FAP application on [REDACTED], 2019. On May 10, 2019, the Department sent Petitioner a Notice of Case Action informing her that she was approved for \$71 in May 2019, and \$284 effective June 1, 2019, ongoing. The Department presented FAP budgets to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, pp. 18-23).

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.

According to the budgets provided, Petitioner's earned income was calculated to be \$[REDACTED]. The Department presented a pay statement submitted by Petitioner (Exhibit A, p. 9). Petitioner received a gross payment of \$[REDACTED] on May 2, 2019. Petitioner was paid biweekly. The Department testified that Petitioner had recently started her employment and only one paycheck was available to calculate her income. When multiplying Petitioner's gross income by the 2.15 multiplier, it results in a standard monthly income amount of \$[REDACTED]. Therefore, the Department correctly calculated Petitioner's income from employment.

In May 2019, the Department included \$587 in unearned income. The Department testified that in May 2019, Petitioner was receiving Family Independence Program (FIP) benefits in the amount of \$587. Petitioner did not dispute the income. Therefore, the Department properly included \$587 in unearned income.

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 \$354. Petitioner's FAP benefit group size of four justifies a standard deduction of \$168. RFT 255 (October 2018), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses in May 2019. 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 \$135 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 properly determined Petitioner's adjusted gross income to be \$[REDACTED]. As Petitioner was not entitled to an excess shelter deduction, his net income is also \$[REDACTED]. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance based on the net income and group size. Based on Petitioner's net income and group size, Petitioner's FAP benefit issuance is \$89. Petitioner applied for FAP benefits on [REDACTED], 2019. Petitioner was entitled to FAP benefits for 25 days of the 30 days in May 2019. Therefore, the Department properly determined Petitioner was entitled to \$71 in May 2019.

According to the budget provided, Petitioner was entitled to \$353 in FAP benefits for June 1, 2019, ongoing (Exhibit A, pp. 21-23). All budget factors remained the same with the exception that the Department removed the unearned income, as Petitioner's FIP benefit case closed effective June 1, 2019 (Exhibit A, pp. 4-6), and provided her with a dependent care deduction, as her CDC benefit case closed effective June 1, 2019. As a result, Petitioner was entitled to an excess shelter deduction of \$131. Petitioner's net income with the removal of the unearned income and addition of the dependent care deduction was \$963. Per RFT 260, her benefit amount was correctly determined as \$353. However, according to the notice issued on May 10, 2019, Petitioner was only approved for \$284 in FAP benefits per month effective June 1, 2019. The Department could not explain the discrepancy between the FAP benefit amount in the notice and in the budget provided. The Department did not present Petitioner's FAP eligibility summary. It is unclear as to the amount of FAP benefits that Petitioner actually received. Therefore, the Department failed to establish that it properly approved Petitioner for the correct benefit amount.

CDC

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

In this case, Petitioner was an ongoing CDC benefit recipient. On April 4, 2019, the Department sent Petitioner a redetermination with a due date of May 1, 2019. On May 10, 2019, the Department sent Petitioner a Notice of Potential CDC Closure, informing her that if her redetermination was not received by May 31, 2019, the Department would close her benefit case. The Department testified that Petitioner did not return her redetermination, and as a result, her CDC benefit case closed effective June 1, 2019, ongoing.

The Department must periodically redetermine or renew an individual's eligibility for active programs. BAM 210 (April 2017), p. 1. Redetermination, renewal, semi-annual and mid-certification forms are often used to redetermine eligibility of active programs. BAM 210, p. 1. A complete redetermination/renewal is required at least every 12 months. BAM 210, p. 1. For CDC cases, when the redetermination packet is not received by the 10th day of the redetermination month, the Department will issue a Notice of Potential Child Development and Care Closure to the client. BAM 210, p. 13. If the redetermination is not received by the negative action cut-off date of the redetermination month, the Department will close the benefit case. BAM 210, p. 13.

The Department presented Petitioner's electronic case file (ECF) (Exhibit A, p. 24). The ECF consists of scanned documents, arranged by category and identified by a client name, recipient ID or case number, established for a particular client group. BAM 300 (October 2016), p. 1. The ECF contains all forms, documents and other evidence to the group's current and past eligibility. BAM 300, p. 1. The ECF revealed Petitioner did not return the redetermination. Therefore, the Department acted in accordance with policy when closed Petitioner's CDC benefit case.

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 CDC benefit case. The Department failed to establish that it acted in accordance with policy when it approved Petitioner's FAP benefit amount.

Accordingly, the Department's decision is **REVERSED**, in part, with respect to Petitioner's FAP benefit amount and **AFFIRMED**, in part, with respect to Petitioner's CDC benefit case.

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. Reexamine Petitioner's FAP eligibility as of June 1, 2019, ongoing; and
2. If Petitioner was not issued \$353 in FAP benefits, issue supplements.

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-Wayne-15-Hearings
M. Holden
D. Sweeney
L. Brewer-Walraven
BSC4-Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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