



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: July 2, 2019
MOAHR Docket No.: 19-005695
Agency No.: ██████████
Petitioner: ██████████

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 July 1, 2019, from ██████████ Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Morgan Hafler, Hearings Facilitator.

ISSUE

Did the Department properly decrease Petitioner's Food Assistance Program (FAP) benefit rate?

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 is an ongoing FAP recipient.
2. Petitioner was undergoing the Redetermination process for her FAP benefits.
3. On April 25, 2019, the Department received copies of Petitioner's daughter's paystubs for pay dates April 5, 2019 and April 19, 2019.
4. During the review, the Department determined that Petitioner's Child Development and Care (CDC) income for the time she acts as a childcare provider was not being budgeted properly in her FAP case.

5. On May 14, 2019, the Department issued a Notice of Case Action to Petitioner informing her that her FAP benefit rate would decrease to \$66.00 effective June 1, 2019 for a group size of three after consideration of the CDC income as well as her daughter's income.
6. On May 22, 2019, the Department received Petitioner's request for hearing disputing the reduction in her FAP benefit rate.

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 recalculation of her FAP benefit rate. 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), 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 averaged and multiplied by 4.2. *Id.* Income received on a bi-weekly basis is averaged and multiplied by 2.15. *Id.* Income received twice per month is added together. *Id.*

Petitioner is paid as a childcare provider for her grandchild and another child through the CDC program. As a result, Petitioner receives a check twice monthly from the Department for the childcare services she provides. She receives \$102.40 for each child twice per month. Therefore, Petitioner's monthly standardized income is \$409.60.

Petitioner's daughter who is also in the group is employed and receives a bi-weekly wage. Her check stub from April 5, 2019 was for \$[REDACTED] in gross wages. Her check

stub dated April 19, 2019 was for \$[REDACTED] in gross wages. When Petitioner's daughter's check stubs are averaged together and multiplied by 2.15, her standardized monthly income is \$[REDACTED]. Thus, the total household standardized income is \$[REDACTED]. The Department calculated the total household standardized income to be \$[REDACTED] per month which is not supported by the calculations above or policy. No evidence was presented of any other sources of income.

After consideration of income, the Department considers all appropriate deductions and expenses. No evidence was presented that Petitioner, her daughter, or her granddaughter were seniors, disabled, or disabled veterans (SDV) group members; therefore, the group is eligible for the following deductions to income:

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

BEM 550 (January 2017), p. 1; BEM 554 (August 2017), p. 1; BEM 556 (April 2018), p. 3.

Both Petitioner and her daughter have earned income which should be reduced by the earned income deduction totaling \$384.78. The household does not have a dependent care expense or child support expense, and the Department properly budgeted \$0.00 for each item. The Department also properly provided the \$158.00 standard deduction for a group size of three. RFT 255 (October 2018), p. 1. After consideration of these deductions, the Adjusted Gross Income (AGI) is calculated to be \$1,381.09.

Once the Adjusted Gross Income is calculated, the Department must then consider the Excess Shelter Deduction. Petitioner does not have a rental expense but is responsible for the costs of heat and utilities. The Department properly afforded Petitioner the Heat and Utility Standard Deduction (H/U) of \$543.00. RFT 255, p. 1. After consideration of any rental expense and the H/U, Petitioner has a total housing cost of \$543.00 which is then reduced by 50% of Petitioner's AGI (\$690.54). Since after subtracting 50% of Petitioner's AGI from the total housing cost results in a negative number, Petitioner is not eligible for an Excess Shelter Deduction; and her AGI is the same as her total net income or \$1,381.09. The FAP Net Income Limit for a group size of three is \$1,732.00. RFT 250 (October 2018), p. 1. All FAP clients must have income below the net income limit to be eligible for FAP benefits. BEM 550 (January 2017), p. 1. Since Petitioner has income less than the Net Income limit, she is not eligible for FAP benefits. Petitioner's group's Net Income is compared against the FAP Issuance Tables found in RFT 260 which show that Petitioner should be receiving \$90.00 in FAP benefits per month.

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 in determining Petitioner's FAP benefit rate.

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. Redetermine Petitioner's FAP eligibility effective June 1, 2019;
2. If Petitioner is otherwise eligible, issue supplements to Petitioner for benefits not previously received effective June 1, 2019; and,
3. Notify Petitioner in writing of its decision.

AMTM/jaf



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

DHHS

Keisha Koger-Roper
MDHHS-Wayne-55-Hearings

Petitioner

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