



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: August 20, 2019
MOAHR Docket No.: 19-007455
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 August 12, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Coordinator.

ISSUE

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits?

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 recipient of FAP benefits.
2. On October 23, 2018, the Department sent Petitioner a Notice of Case Action informing her that effective December 1, 2018, her FAP benefits were being decreased to \$10 monthly. (Exhibit A pp.6-9)
3. On an unverified date in January 2019, Petitioner reported her employment with [REDACTED] (SISD).
4. On February 20, 2019, the Department sent Petitioner a Notice of Case Action informing her that effective February 1, 2019, she was approved for FAP benefits in the amount of \$378 monthly. (Exhibit A, pp. 20- 22)

5. On or around March 27, 2019, Petitioner submitted her lease agreement, verifying her monthly housing costs in the amount of \$500.
6. Petitioner was terminated from her employment in March 2019 and submitted a letter to the Department verifying her loss of employment on or around April 3, 2019.
7. The Department failed to timely process Petitioner's reported loss of employment and housing expenses and did not timely apply them towards her FAP budget.
8. On June 7, 2019, the Department sent Petitioner a Notice of Case Action informing her that effective July 1, 2019, her FAP benefits would be increased to \$505 monthly. The Budget Summary included with the Notice of Case Action indicates that while \$0 is being considered for earned income, the Department again failed to consider Petitioner's \$500 housing expenses. (Exhibit A, pp. 4-5)
9. On June 12, 2019, Petitioner requested a hearing disputing the Department's failure to process her reported changes and the Department's calculation of her FAP benefits for the months of January 2019, April 2019, May 2019 and June 2019. (Exhibit A, pp. 2-3)

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 requested a hearing on June 12, 2019 disputing the Department's calculation of her FAP benefits, specifically, the months of January 2019, April 2019, May 2019, and June 2019. Petitioner was informed that the undersigned Administrative Law Judge (ALJ), did not have the authority to address the amount of her FAP benefits for January 2019, as her hearing request was filed more than 90 days from the date of the negative action taken on her case. See BAM 600.

The hearing proceeded with respect to Petitioner's FAP benefits for the months of April 2019, May 2019, and June 2019, as it was established that Petitioner reported changes to her employment and housing expenses that were not timely process by the Department. The Department acknowledged that Petitioner was approved for and

received FAP benefits in the amount of \$378 for the three months at issue and the Department made no changes to Petitioner's FAP budget until July 2019.

At the hearing, the Department presented a FAP EDG Net Income Results Budget which was reviewed to determine if the Department properly calculated the amount of Petitioner's FAP benefits for the months of April 2019, ongoing. All figures, except for the earned income and the excess shelter deduction reviewed on the budget were either undisputed or confirmed as correct by Petitioner. Thus, it was established that the only dispute was the calculation of Petitioner's earned income and excess shelter deduction. (Exhibit B)

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. 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. 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 (October 2018), pp. 6-7.

Initially, the Department testified that it determined Petitioner had total earned income in the amount of \$████ from her employment at █████ and that in calculating this amount, it considered an \$████ final check dated April 5, 2019 as well as \$████ paid on March 22, 2019. After inquiry regarding this discrepancy by the undersigned ALJ, the Department retrieved the FAP EDG Net Income Results budget for the months at issue which actually reflected earned income in the amount of \$████. (Exhibit B). The Department could not identify or otherwise explain how the \$████ earned income was determined, or what specific pay dates and amounts were relied upon. It was also unknown if Petitioner's income was biweekly or weekly and which multiplier was used to prospectively budget her earnings. Therefore, the Department failed to establish that it properly calculated Petitioner's earned income for the months of April 2019 to June 2019.

Petitioner disputed the earned income amount determined by the Department and testified that she timely notified the Department of her loss of employment. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment must be reported within 10 days of

receiving the first payment reflecting the change. BAM 105 (January 2019), pp. 11-12. For FAP cases, income decreases that result in a benefit increase must be effective no later than the first allotment issued 10 days after the date the change was reported, provided necessary verification was returned by the due date. If verification is required or deemed necessary, the Department must allow the household 10 days from the date the change is reported or the date the Department requests verification to provide the verification requested. The change must still affect the correct issuance month i.e., the month after the month in which the 10th day after the change is reported. BEM 505 (April 2017), pp. 10-11.

The Department conceded that on April 3, 2019, it received a letter verifying that Petitioner was no longer employed and had no earnings. While Petitioner's reported loss of employment may or may not have impacted her April 2019 FAP benefits based on the above referenced policy, the Department was unable to explain why Petitioner's earnings continued to be included in the FAP budget until July 2019 or why the Department otherwise failed to timely process her reported income changes.

Applying only the \$31 telephone standard, the Department determined that Petitioner was eligible for \$0 as an excess shelter deduction. The Department initially testified that Petitioner did not have any housing, heating, or utility expenses, and thus, none were considered in calculating the excess shelter deduction. Petitioner disputed the Department's testimony and asserted that on or around March 27, 2019, she submitted verification of her lease agreement reflecting a \$500 monthly housing obligation. Petitioner further asserted that she is responsible for heating, water and electric expenses that are not included in her monthly rent. During the hearing, the Department retrieved information from Petitioner's electronic case file which confirmed her testimony that she submitted a lease agreement on that date. There was no evidence that the Department timely processed Petitioner's reported housing expense or considered her eligibility for the \$543 heat and utility standard in calculating the excess shelter deduction on the FAP budgets. See BAM 220 (April 2019); BEM 554 (April 2019). Additionally, although the Department testified that Petitioner's \$500 housing expenses was processed and applied to her FAP budget for the month of July 2019, the budget summary included with the June 7, 2019 Notice of Case Action indicates otherwise, as \$0 in housing costs are identified. (Exhibit A, pp. 4-5)

Therefore, upon thorough review, 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 because of the errors in the calculation of Petitioner's earned income and excess shelter deduction identified above, the Department did not act in accordance with Department policy when it calculated Petitioner's FAP benefits for the months of April 2019, May 2019 and June 2019, ongoing.


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. Process Petitioner's reported changes including loss of employment income and housing expenses;
2. Recalculate Petitioner's FAP budgets from April 1, 2019, ongoing, to reflect the reported changes;
3. Issue FAP supplements to Petitioner from the April 1, 2019, ongoing, for any FAP benefits she was eligible to receive but did not, in accordance with Department policy; and
4. Notify Petitioner in writing of its decision.

ZB/tlf



Zainab A. Baydoun
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:

[REDACTED]

Petitioner – Via First-Class Mail:

[REDACTED]