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GOVERNOR

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

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DIRECTOR

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Date Mailed: September 9, 2019
MOAHR Docket No.: 19-008608
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 September 5, 2019, from ██████████ Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearing Facilitator.

ISSUE

Did the Department properly deny Petitioner's Food Assistance Program (FAP) application due to her gross income exceeding the gross income limit?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner applied for FAP benefits on or about June 28, 2019. After reviewing the application, the Department denied Petitioner's application on July 26, 2019, in a Notice of Case Action denying the application as of June 28, 2019.
2. The Department denied the Petitioner's application due to excess income in that her household monthly income exceeded the gross income monthly limit for a household of three (\$2,252) and the gross income monthly limit for a household of two members \$1,784. RFT 250 (October 2018). The Department also determined that Petitioner's granddaughter who lives with her is open in another FAP case and could not be included as a FAP group member. Exhibit A, p. 1.

3. In her FAP application, Petitioner listed three group members in her household; herself, her son who was ■ years of age, and her granddaughter age ■ (■■■■■■■■■■). The Petitioner is her granddaughter's court-appointed guardian. As part of the Department's review, the Department determined that ■■■■■■■■■■ was active on another case and thus, could not be included in the FAP group. Exhibits F and G.
4. The Petitioner provided three paystubs to the Department: \$■■■■■■■■■■ for pay date June 14, 2019; \$■■■■■■■■■■ for pay date June 26, 2019; and \$■■■■■■■■■■ for pay date July 12, 2019. The Petitioner is paid biweekly. Exhibit C.
5. The Petitioner requested a timely hearing on August 4, 2019, protesting the Department denial of her FAP application.

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, the Department denied the Petitioner's application because it determined that her gross monthly income exceeded the gross income limit for a group size of two members of \$1,784.00. RFT (10/2018). The Petitioner had also listed a third group member on the application who was her granddaughter, who was ■ years of age. The Department found that the granddaughter could not be included due to the fact that she was already open in another case (her mother's) but was living with Petitioner who is the child's legal guardian. At the time of the application, the Department correctly determined it could not include the child and notified the caseworker assigned to the child's mother's case of the issue. Exhibit A, p. 14. The caseworker assigned to the child's mother's case must seek verification of this issue so an overissuance to the mother for FAP benefits can be further avoided. Petitioner's son also lives with Petitioner and was age 21 at the time of the application; Department policy in BEM 212 requires that parents and their children **under** 22 years of age who live together **must** be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212 (February 2019), p. 1.

As explained at the hearing and below in this decision, based upon the gross income limit for a group size of three members, (assuming the granddaughter was included) which is \$2,252 a month, the Petitioner still would not have been eligible.

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 (January 2016), 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 (April 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 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 testified Petitioner's earned income from employment was calculated to be \$[REDACTED] per month. Petitioner had submitted pay statements reflecting her income from employment. Petitioner's pay statements reflected that she received the following payments: \$[REDACTED] for pay date June 14, 2019; \$[REDACTED] for pay date June 26, 2019; and \$[REDACTED] for pay date July 12, 2019. The Petitioner is paid biweekly. Petitioner confirmed the pay statements were accurate. When Petitioner's payment amounts are averaged and multiplied by the 2.15 multiplier, it results in a total monthly standard amount of \$[REDACTED]. Therefore, the Department did not correctly calculate Petitioner's monthly income from employment. In addition, the Petitioner also receives \$158 in FIP assistance for her granddaughter, which income must also be added to the income from employment for total countable gross income of \$[REDACTED]. The Department determined total countable gross income of \$[REDACTED] Exhibit D.

As can be seen, although the undersigned determined a lower monthly countable income than the Department's which was not correct, the difference still does not allow the Petitioner to be eligible for FAP benefits; and therefore, the error is harmless. The Petitioner's gross income of \$[REDACTED] would fail the gross income limit test as her gross income exceeds the \$1,784 gross income limit for a group size of two. Likewise, the Petitioner would also fail the gross income limit test for a group size of three, which is \$2,252. RFT 250 (October 2018, p. 1).

Thus, based upon the Petitioner's gross countable income exceeding the gross income limit for a group size of two, the Department correctly determined that the Petitioner was not eligible for FAP benefits and correctly denied the application.

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 denied the Petitioner FAP application due to the Petitioner's gross monthly countable income exceeding the income limit.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

LMF/jaf



Lynn M. Ferris

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 (via electronic mail)

Susan Noel
MDHHS-Wayne-19-Hearings

BSC4
M Holden
D Sweeney

Petitioner (via first class mail)

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