



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: October 8, 2019
MOAHR Docket No.: 19-009709
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 October 3, 2019 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Toni Carstens, Family Independence Specialist. During the hearing, a 51-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-51.

ISSUE

Did the Department properly determine Petitioner's eligibility for Food Assistance Program (FAP) benefits, effective September 1, 2019?

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 recipient of FAP benefits from the Department in a group of three that consisted of herself and two foster children. In July and August 2019, Petitioner received \$505 in FAP benefits each month.
2. At all times relevant to the instant matter, Petitioner was receiving \$1,328 per month in unearned income from a pension. Exhibit A, p. 29.
3. Starting in June or July 2019, Petitioner's two foster children began receiving income of \$534.44 per month each.

4. At all times relevant to the instant matter, Petitioner was responsible for monthly housing costs of \$365 and was responsible for utilities, including heat.
5. On August 12, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that effective September 1, 2019, Petitioner's monthly FAP benefits would be reduced to \$15 for a group of one. Exhibit A, pp. 6-11.
6. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's action.

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 objected to the Department's calculation of Petitioner's monthly FAP benefits, effective September 1, 2019. Prior to that effective date, Petitioner's group of three had been receiving \$505 in FAP benefits per month. Effective September 1, 2019, Petitioner was determined to be eligible for \$15 in FAP benefits per month in a group of one.

During the hearing, the Department representative, Ms. Carstens, explained that the Department initially erred in determining Petitioner's eligibility for FAP benefits by deeming Petitioner's \$1,328 in monthly income as uncountable income. Thus, for a few months, the Department provided Petitioner with more than what she was entitled.

At about the same time the Department discovered the mistake, Petitioner's two foster children began receiving monthly income that totaled \$1,068.88. Upon fixing its initial error and adding all the countable household income to the budget, the Department determined that Petitioner exceeded the income limit for FAP eligibility for a group of three. However, the Department ran Petitioner's eligibility for a group of one, counting only Petitioner's income, and found that Petitioner was eligible for \$15 per month in FAP benefits. It then issued the August 12, 2019 Notice of Case Action informing Petitioner of the same.

Generally speaking, individuals who live together and prepare meals together must be included in the same FAP group. BEM 212 (July 2019), p. 1. However, a FAP group

may choose to include or exclude a foster child whose foster parent is a group member. BEM 212, p. 2. If excluded, the foster child is not eligible for FAP as a separate group, and the foster care payment is not income to the group. BEM 212, p. 2.

Thus, in order to determine whether the Department's action was correct, Petitioner's eligibility for FAP benefits needs to be determined both with the foster children included and with them excluded. If either of those scenarios result in Petitioner being eligible for more than \$15 per month in FAP benefits, the Department's action will not be sustained.

FAP BENEFITS FOR THE GROUP OF THREE

First, we will determine Petitioner's eligibility for FAP benefits with a group of three including the foster children and their income. Between the three group members, their combined unearned income is \$2,397. Petitioner also had verified housing expenses of \$365 per month and was entitled to the \$543 heat/utility (h/u) standard.

Petitioner's gross unearned income is first reduced by the \$158 standard deduction, resulting in a modified gross income of \$2,239. Petitioner did not have any deductible child care, medical, or child support expenses. Thus, those deductions are not applicable.

Petitioner is also not eligible for the excess shelter deduction in the three person group scenario. Petitioner had housing costs of \$365 and was eligible for the h/u standard of \$543. Adding the expenses Petitioner qualified for together, Petitioner had monthly shelter expenses of \$908. The excess shelter deduction is calculated by subtracting from the \$908 one half of the adjusted gross income of \$2,239, which is \$1,119. The remaining amount, if it is greater than \$0, is the excess shelter deduction. In this case, the remaining amount is less than zero. Thus, Petitioner's net income is \$2,239.

The net income limit for a group of three is \$1,732. RFT 250 (October 2018), p. 1. As Petitioner's net income for her group of three exceeds the net income limit, Petitioner would be eligible for no FAP benefits if she elected to include the two foster children in her FAP group.

FAP BENEFITS FOR THE GROUP OF ONE

Next, we will determine Petitioner's eligibility for FAP benefits with a group of one, excluding the foster children and their income. As stated above, Petitioner had monthly unearned income of \$1,328. Petitioner also had verified housing expenses of \$365 per month and was entitled to the \$543 heat/utility (h/u) standard.

Petitioner's gross unearned income is first reduced by the \$158 standard deduction, resulting in a modified gross income of \$1,170. Petitioner did not have any deductible child care, medical, or child support expenses. Thus, those deductions are not applicable.

However, Petitioner is eligible for the excess shelter deduction in the one person group scenario. Petitioner had housing costs of \$365 and was eligible for the h/u standard of \$543. Adding the expenses Petitioner qualified for together, Petitioner had monthly shelter expenses of \$908. The excess shelter deduction is calculated by subtracting from the \$908 one half of the adjusted gross income of \$1,170, which is \$585. The remaining amount, if it is greater than \$0, is the excess shelter deduction. In this case, the remaining amount is \$323. Petitioner's net income is determined by subtracting the excess shelter deduction (\$323) from the adjusted gross income (\$1,170). Thus, Petitioner's net income is \$847. That is what the Department determined and is correct. Exhibit A, p. 8. The Food Assistant Issuance Table shows \$15 in benefits for \$847 net income for a household of one. RFT 260 (October 2018), p. 12.

CONCLUSION

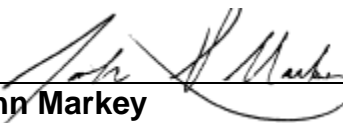
Petitioner had the option to choose between including or excluding the two foster children from her FAP group. The Department determined Petitioner's eligibility under both scenarios. As demonstrated above, the Department correctly determined that including the foster children would result in total ineligibility whereas excluding them would result in Petitioner being eligible for \$15 per month in FAP benefits. After making those determinations, the Department chose the most favorable option available for Petitioner.

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 determined that Petitioner was eligible for \$15 per month in FAP benefits, effective September 1, 2019.

DECISION AND ORDER

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

JM/cg



John Markey
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-Marquette-Hearings
M. Holden
D. Sweeney
BSC1- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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