



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: November 26, 2019
MOAHR Docket No.: 19-011576
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on November 21, 2019, from Lansing, Michigan. Petitioner represented herself and her mother Doris Likely testified on her behalf. The Department of Health and Human Services was represented by Verenie Davis and Mary Stokenberg.

ISSUE

Did the Department of Health and Human Services (Department) properly determine Petitioner's eligibility for the Food Assistance Program (FAP)?

FINDINGS OF FACT

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

1. On [REDACTED], 2019, the Department received Petitioner's application for Food Assistance Program (FAP) benefits. Exhibit A, pp 20-21.
2. Petitioner was an ongoing Food Assistance Program (FAP) recipient when she returned a Semi-Annual Contact Report (DHS-1046) reporting that her daughter was employed. Exhibit A, pp 3-5.
3. Petitioner's daughter received earned income in the gross weekly amounts of \$299.20 on August 30, 2019, \$352.50 on September 6, 2019, \$486.60 on September 13, 2019, and \$272.20 on September 20, 2019. Exhibit A, pp 5-9.
4. On October 17, 2019, the Department notified Petitioner that she was eligible for a \$636 monthly allotment Food Assistance Program (FAP) benefits as of November 1, 2019. Exhibit A, pp 10-11.

5. On October 21, 2019, the Department received Petitioner's request for a hearing protesting the amount of Food Assistance Program (FAP) benefits she is eligible for.

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.

All earned and unearned income available is countable unless excluded by policy. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. Department of Human Services Bridges Eligibility Manual (BEM) 500 (July 1, 2017).

All income is converted to a standard monthly amount. If the client is paid weekly, the Department multiplies the average weekly amount by 4.3. If the client is paid every other week, the Department multiplies the average bi-weekly amount by 2.15. Department of Human Services Bridges Eligibility Manual (BEM) 505 (October 1, 2017), pp 7-8.

The Department initiated a routine review of Petitioner's eligibility for ongoing FAP benefits based on the information reported on Petitioner's Semi-Annual Contact Report (DHS-1046). Petitioner reported that her daughter was the only person in the household receiving income. The daughter receives a prospective monthly income in the gross monthly amount of \$1,516, which was determined by multiplying her average bi-weekly gross income by the 4.3 conversion factor as directed by BEM 505. Petitioner's adjusted gross income was determined by reducing the earned income by the 20% earned income deduction and the \$234 standard deduction for a household of six.

On September 13, 2019, Petitioner's daughter received \$86.60 of gross income for a holiday premium and 3.73 hours of overtime. This Administrative Law Judge finds that the Department reasonably determined that this income was not so unusual that it should be excluded from countable income. As the household's income changes, the group's eligibility for FAP benefits will change, but the Department's determination of countable income for October of 2019, was made in accordance with Department policy.

The heat and utility standard covers all heat and utility costs including cooling, except actual utility expenses. FAP groups that qualify for the heat and utility standard do not receive any other individual utility standards. A FAP group which has a heating expense or contributes to the heating expense separate from rent, mortgage or condominium/maintenance payments must use the heat and utility standard. Department of Human Services Bridges Eligibility Manual (BEM) 554 (October 1, 2019), p 15.

Petitioner did not report any child support expenses, out of pocket medical expenses, or monthly housing expenses other than her obligation to pay utility expenses. Therefore, Petitioner is entitled to the standard heat and utility deduction, but no other shelter expenses. Petitioner is entitled to a \$29 deduction for monthly shelter expenses, which was determined by reducing the standard deduction for utility expenses by 50% of her adjusted gross income as directed by BEM 556, p 5.

Petitioner's net income of \$949 was determined by reducing her adjusted gross income by her shelter deduction. A group of six with a net income of \$949 is eligible for a \$636 monthly allotment of FAP benefits. Department of Health and Human Services Reference Table Manual (RFT) 260 (October 1, 2019), p 14.

A timely hearing request is a request received by the Department within 10 days of the date the notice of case action was mailed. While waiting the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. The Department will not restore benefits reduced due to a mass update required by state or federal law unless the issue contested is that the benefits were improperly computed. Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2019), pp 25-26.

In this case, Petitioner made a timely request for a hearing protesting the amount of FAP benefits she is eligible for. Petitioner's eligibility for FAP benefits was impacted by a change to the standard heat and utility deduction and the income of a group member.

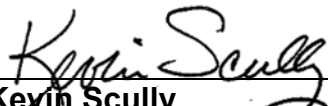
However, even though pending the reduction of FAP benefits would have been an appropriate application of BAM 600, the Department presented substantial evidence supporting that it properly determined Petitioner's monthly allotment of FAP benefits as of November 1, 2019. If Petitioner's FAP benefits had been maintained at the prior level while waiting for her hearing, then the Department would have been required to recover the benefits that she was not eligible for. Therefore, it would be inappropriate to order the Department to issue a supplement of benefits that Petitioner is not entitled to.

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 Petitioner's eligibility for Food Assistance Program (FAP) benefits as of November 1, 2019.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

KS/hb



Kevin Scully
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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI 49507

Kent County, DHHS

BSC3 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]