



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: December 20, 2019  
MOAHR Docket No.: 19-012483  
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 December 19, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Mark Boyd, Family Independence Manager.

### **ISSUE**

Did the Department properly deny Petitioner's Food Assistance Program (FAP) benefits for October 2019 and November 2019 and approve her for FAP benefits in the amount of \$16 for December 1, 2019, ongoing?

### **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 previously a recipient of FAP benefits. On an unverified date, Petitioner's FAP case closed.
2. On or around [REDACTED], 2019, Petitioner submitted a new application for FAP benefits. At the time of the application, Petitioner was employed at [REDACTED].
3. On October 11, 2019, the Department sent Petitioner a Verification Checklist (VCL) instructing her to submit proof of her employment with [REDACTED] such as pay stubs or a verification of employment form, current verification of assets for her

checking account, proof of property taxes and proof of her housing expenses and utility expenses. Petitioner was instructed to submit the requested documentation to the Department by October 21, 2019. (Exhibit B).

4. On or around October 23, 2019, Petitioner submitted verification of her pay stubs. (Exhibit A, pp.11 – 15)
5. The Department did not receive verification of Petitioner's current checking account by the due date identified on the VCL.
6. On November 4, 2019, the Department sent Petitioner a Notice of Case Action (Notice) advising her that from October 7, 2019, through November 30, 2019, she was denied FAP benefits because she failed to return verification of her bank checking account. The Notice further informed Petitioner that for December 1, 2019, ongoing, she was approved for FAP benefits in the monthly amount of \$16. (Exhibit A, pp.6 –8)
7. The Department determined that the verification of Petitioner's assets was no longer required effective December 1, 2019, and thus, processed Petitioner's application using the subsequent processing policy, thereby approving her for FAP benefits from December 1, 2019 ongoing.
8. On or around November 18, 2019, Petitioner requested a hearing disputing the Department's actions with respect to her FAP benefits.

### **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, it was initially unclear what negative action Petitioner requested a hearing to dispute, as she made continuous references to her FAP eligibility of \$16 for more than one year and months in which she received no FAP benefits. Petitioner also referred to her submission of documents and her notification to the Department of changes with respect to her income and employment. After some discussion, it was

established that Petitioner was previously a FAP benefit recipient but her case closed on an unverified date and she did not receive any FAP benefits for several months. Although Petitioner indicated she requested a hearing in August 2019, Petitioner later testified that the request for hearing was withdrawn. Petitioner confirmed that she reapplied for FAP benefits on or around [REDACTED], 2019 and in response, received the Notice dated November 4, 2019. It was established that Petitioner requested a hearing to dispute the Department's decision with respect to the November 4, 2019, Notice.

Additionally, verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (April 2017), p.1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. Although the client must obtain the required verification, the Department must assist if a client needs and requests help. If neither the client nor the Department can obtain the verification despite a reasonable effort, the Department is to use the best available information; and if no evidence is available, the Department is to use its best judgment. BAM 130, p. 3.

With respect to FAP cases, clients are given 10 calendar days to provide the verifications requested by the Department. Verifications are considered to be timely if received by the date they are due. BAM 130, pp.7-8. The Department sends a negative action notice when the client indicates a refusal to provide a verification or the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130, pp. 7-8. The Department will determine a client's eligibility based on the compliance date if verifications are returned after the due date. The Department will reregister the application if the client complies with the VCL within 60 days of application date, in accordance with the BAM 115 subsequent processing policy. BAM 130, pp. 8-9; BAM 115 (October 2019), pp. 25-26.

At the hearing, the Department testified that Petitioner was found to be ineligible for FAP benefits from [REDACTED], 2019 through November 30, 2019 because she failed to provide sufficient verification of her current bank checking account asset information. The Department stated that on or around October 23, 2019, it received verification of Petitioner's earnings and applied the subsequent processing policy to determine her eligibility for December 1, 2019 ongoing, as the Department policy no longer required verification of bank account information effective December 1, 2019 and client statement was acceptable. BEM 400 (December 2019), pp. 60-63. Petitioner testified that she returned a copy of her checking account statement on October 23, 2019, with her paystubs. Petitioner provided a copy of the statement she indicated she submitted, a review of which shows that the statement was not current and reflected Petitioner's assets for the period from July 5, 2019 through August 5, 2019. (Exhibit 1). The Department testified it had no record of the bank asset information in October 2019 and further, the VCL required Petitioner to provide a current bank statement, thus, the statement from July 2019 through August 2019 would be unacceptable. Petitioner further stated that she also submitted a copy of a more recent bank statement but was

unable to identify the exact date of its submission, and a more recent bank statement was not presented for review during the hearing. Petitioner later testified that she did not receive a copy of the VCL. It was established that the VCL was mailed to Petitioner at her confirmed mailing address and there was no evidence that it was returned to the Department as undeliverable. Additionally, while Petitioner reported having some issues with her mail, she confirmed that she did not notify the Department of any such mail issues.

Based on the evidence as it has been presented, the Department properly denied Petitioner's eligibility for FAP benefits from [REDACTED], 2019 through November 30, 2019, as she failed to establish that she provided the Department with sufficient verification of her current bank account information. Because effective December 1, 2019, the Department was authorized to consider Petitioner's client statement or prior checking account asset information that may have been on file, the Department properly found that she was eligible for FAP benefits beginning December 1, 2019.

Petitioner also raised concerns with respect to the amount of her FAP benefits, specifically, the \$16 in monthly benefits she was approved for from December 1, 2019, ongoing. The Department presented a FAP EDG Net Income Results Budget which was thoroughly reviewed to determine if the Department properly calculated the amount of Petitioner's FAP benefits for the month of December 2019, ongoing. (Exhibit A, pp. 9-15; Exhibit C).

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 2019), pp. 6-7.

The budget shows that the Department concluded that Petitioner had earned income of \$1732. The Department testified that it considered the pay stubs submitted from Petitioner's employment with [REDACTED], which at the time of the application, was expected to continue. Specifically, the Department considered Petitioner's biweekly

earnings of \$763.53 paid on September 27, 2019 and \$847.81 paid on September 13, 2019. Petitioner testified that she was no longer working at the [REDACTED] employer as of the end of October 2019, start of November 2019. Petitioner stated that she obtained new employment with [REDACTED] at the end of November 2019. However, Petitioner could not identify her exact employment end date at [REDACTED] and was unable to recall exactly when she notified the Department of her loss of employment. Petitioner's responses were inconsistent throughout the hearing with respect to when she reported her employment changes to the Department and the effective dates of such changes in employment. Thus, based on the evidence available to the Department at the time the budget was completed, the Department properly considered the pay stubs it had on file and determined that when prospectively budgeted, Petitioner had earned income of \$1732.

The deductions to income on the net income budgets were also reviewed. BEM 550 (January 2017), pp. 1-2. Petitioner's FAP group does not include a senior/disabled/veteran (SDV) member; thus, she is eligible for the following deductions to income:

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

BEM 554 (October 2019), p. 1; BEM 556 (April 2018), p. 3.

In this case, the Department properly applied an earned income deduction of \$347 which is based on 20% of her earned income. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses; therefore, the budget properly did not include any deduction for dependent care or child support. The Department properly applied a standard deduction of \$161 which was based on Petitioner's confirmed group size of two. RFT 255 (October 2019), p. 1. With respect to the excess shelter deduction of \$2, the Department properly applied the \$518 heat and utility standard and considered Petitioner's responsibility for property taxes which when taken monthly, are \$96.07. There was no evidence that Petitioner was responsible for additional housing expenses such as a monthly mortgage payment or homeowner's insurance. Therefore, upon review the excess shelter deduction was properly calculated.

After further review, the Department properly determined Petitioner's net income and took into consideration the appropriate deductions to income. Based on net income of \$1222, Petitioner's two-person FAP group is eligible for \$16 in monthly FAP benefits. RFT 260 (October 2019), p. 17. Petitioner is advised that should she submit updated pay stubs and verification of her loss of employment, the Department would process the reported changes and recalculate her FAP benefits for future months.

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 calculated Petitioner's FAP benefits for the month of December 2019.

**DECISION AND ORDER**

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



ZB/tm

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**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

**DHHS**

Richard Latimore  
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**Petitioner**



cc: FAP: M. Holden; D. Sweeney  
AP Specialist-Wayne County