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GOVERNOR

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

ORLENE HAWKS  
DIRECTOR



Date Mailed: January 16, 2020  
MOAHR Docket No.: 19-013143  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

### **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 January 13, 2020 from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Marci Walker, Lead Work for Eligibility.

### **ISSUE**

Did the Department properly include Petitioner's mother and other children in the home in her group size for Food Assistance Program (FAP)?

Did the Department properly determine that Petitioner was over the income limit for 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 FAP Application listing herself, her mother, and siblings (two) as household members, with Retirement, Survivors and Disability Insurance (RSDI) for Petitioner, and employment income for her mother.
2. At the time of Application, Petitioner was [REDACTED] years old.

3. On September 11, 2019, an interview was held confirming the household composition and sources of income.
4. On the same day, the Department issued a Notice of Case Action to Petitioner informing her that her FAP Application had been denied for excess income.
5. On December 9, 2019, the Department received Petitioner's request for hearing disputing its denial of her FAP Application noting that Petitioner was on disability and prepared her food separately.

### 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 disputes the denial of her FAP Application. The Department denied Petitioner's Application due to excess income after inclusion of Petitioner's mother and siblings in her FAP group. Group composition is established by determining who lives together, the relationships of those living together, whether those living together purchase and prepare food together, and whether there are any other eligible living situations. BEM 212 (July 2019), p. 1. In FAP cases, parents and their children **under** 22 years of age who live together **must** be in the same group. *Id.* Children include natural, step, and adopted children. *Id.* In addition, children (such as Petitioner's siblings) are **always** in the FAP group of their primary caretaker, the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month. BEM 212, pp. 2-3. Since Petitioner must be in the same group as her mother, and her siblings must be in the same group as her mother, Petitioner's group size is four, and no further evaluation is necessary to determine the group size.

The Department presented no evidence as to how the Department determined that Petitioner was over the income limit. Furthermore, the Department failed to specify if Petitioner was over the gross or net income limit. To be eligible for FAP benefits, clients that have FAP group members who are a Senior, Disabled, or Disabled Veteran must have income below the net income limit but are not subject to the gross income limit.

BEM 550, p. 1. Based upon Petitioner's Application and testimony, she has RSDI income of \$1,100.00 per month based upon a disability which qualifies her as an SDV group member. If the Department determined that Petitioner was over the gross income limit, the Department erred in its decision making. Petitioner's mother also has earned income of \$ [REDACTED] per hour working [REDACTED] hours per week paid on a bi-weekly basis for the [REDACTED]. Policy provides that income must be standardized to a monthly amount. BEM 505 (October 2017), p. 8. To do so, Petitioner's mother's bi-weekly wages must be multiplied by 2.15 for a total standardized monthly gross wage of \$ [REDACTED]. Petitioner's and her mother's combined monthly income is \$ [REDACTED]. Evidence was presented that Petitioner's mother also receives child support income, but neither party was certain as to its value.

After consideration of income, the Department considers all appropriate deductions and expenses. Since Petitioner is an SDV group member, she is eligible for the following deductions to income:

- Dependent care expense.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical deduction for expenses greater than \$35.00.
- Excess shelter.

BEM 550; BEM 554 (October 2019), p. 1; BEM 556 (July 2019), pp. 3-6. Ordinarily, the first four expenses are deducted from Petitioner's gross income to achieve her Adjusted Gross Income (AGI). BEM 556, p. 4. After the AGI is calculated, the Department evaluates Petitioner's Excess Shelter Deduction. The Excess Shelter Deduction is calculated by adding Petitioner's housing expense to any utility standard deductions she is eligible to receive and then subtracting half of Petitioner's AGI. BEM 556, pp. 4-6. Once the Excess Shelter Deduction is calculated, if the value is not negative, it is then subtracted from Petitioner's AGI to achieve her net income. BEM 556, p. 6.

The Department presented no budget, no testimony, or other evidence at the hearing showing what items, if any, were budgeted to determine Petitioner's FAP eligibility. Clients have the right to contest a Department decision affecting eligibility or benefit levels, including termination or denial of program benefits, when the client believes the decision is incorrect. BAM 600 (July 2019), pp. 1, 5. When a hearing request is filed, the matter is transferred to the Michigan Administrative Hearing System (MAHS) (now known as the Michigan Office of Administrative Hearings and Rules (MOAHR)) for a hearing before an Administrative Law Judge. BAM 600, p. 1. In preparation for the hearing, the Department is required to send to MOAHR and the client a hearing summary. BAM 600, pp. 9-10, 24. The hearing summary is required to include a clear, concise statement of the case action taken, a chronological summary of events, and citations to relevant law and policy, amongst other things. BAM 600, p. 10. Additionally, a hearing packet must be prepared to send along with the hearing summary. BAM 600, p. 10. The completed hearing packet must include, at a minimum,

the relevant Notice of Case Action and a copy of all documents the Department intends to offer to support its action. BAM 600, p. 10. In essence, the Department has the burden of showing how it came to its conclusions and that its conclusions were correct. The Department has failed to do meet its burden of proof in this case.

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 failed to meet its burden of proof in establishing that Petitioner's FAP Application was denied in accordance with policy.

### **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. Reprocess Petitioner's FAP eligibility effective as of her Application dated [REDACTED] 2019;
2. If otherwise eligible, issue supplements to Petitioner or on her behalf for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.



AMTM/jaf

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**Amanda M. T. Marler**  
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**

Marci Walker  
MDHHS-Shiawasee-Hearings  
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**Petitioner**

