



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: January 24, 2020
MOAHR Docket No.: 19-013250
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 22, 2020 from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Brian Roedema, Assistance Payments Supervisor, and Eския Burrell, Eligibility Specialist.

ISSUE

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit rate?

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 State Emergency Relief (SER) listing employment income from [REDACTED] (Employer).
2. On September 19, 2019, the Department issued a Verification Checklist (VCL) to Petitioner requesting verification of her employment income by September 30, 2019.

3. On September 24, 2019, the Department received check stubs for pay dates September 6, 2019 in the amount of \$604.58 and September 20, 2019 for \$478.23.
4. Petitioner asserts and the Department agrees that Employer corroborates her version of events that Employer submitted a Verification of Employment form showing the end of Petitioner's employment via fax on September 25, 2019.
5. On September 25, 2019, the Department issued a Notice of Case Action to Petitioner informing her that her FAP benefit was increasing to \$415.00 per month effective October 1, 2019 based upon income from Employer and a group size of four.
6. On December 12, 2019, the Department received Petitioner's request for hearing as well as a copy of the Verification of Employment form that both Employer and Petitioner assert was submitted in September.

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 Department's inclusion of her income from Employer in calculating her FAP benefit rate because her employment had ended and verifications were submitted.

Policy provides that the Department must consider all countable income in determining FAP eligibility. BEM 500 (July 2017); BEM 501 (October 2019). Income means a benefit or payment received by an individual which is measured in money. BEM 500, p. 3. Countable income is income remaining after applying policy; it is money that is not specifically excluded from consideration. *Id.* The Department is required to verify all non-excluded income at application, at member add, at redetermination, or when a change is reported. BEM 500, pp. 13-14.

According to the Department, it received two check stubs from Petitioner on [REDACTED] 2019 for work with Employer. According to Petitioner, a Verification of Employment form was also submitted the next day by fax from Employer. Prior to the

hearing, Petitioner and the Department contacted Employer to attempt to see if Employer had a fax confirmation showing that the fax had been sent, but Employer was unable to obtain the record because it was too old, and Employer could not search for fax confirmations that far back. However, Employer advised both Petitioner and Department that a fax had been sent on September 24, 2019 with the Verification of Employment form completed. In December 2019, when Petitioner approached Employer to see if Employer had submitted the form, Employer confirmed that they had and provided Petitioner with a copy of the original Verification of Employment submitted to the Department. Petitioner provided a copy of the same form with her Request for Hearing. The form is signed by Petitioner on the front page as September 24, 2019 and [REDACTED], Office Manager for Employer, on the last page then dated September 25, 2019. The Department has no records of receipt of the Verification of Employment in September 2019. However, the Department concedes that, on occasion, when multiple faxes are being received by the Department at the same time, sometimes the faxes do not come through causing problems which is a possibility in this case.

Given that the Department concedes occasional errors in its receipt of faxes, the Petitioner's assertions that the fax was sent by Employer, Employer's assertions that the fax was sent by Employer, and the form which is dated for September 24 and September 25 by Petitioner and Employer, it seems likely that the document was sent but not received due to some technical error the Department was having with its fax. Since the Department did not receive verification of the end of Petitioner's employment, the Department continued to budget Petitioner's income from Employer. Given the technical problems through no fault of Petitioner or Employer but instead on the part of the Department, the Department erred in continuing to budget Petitioner's income and determine Petitioner's FAP eligibility effective October 1, 2019.

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 did not act in accordance with Department policy when it budgeted Petitioner's income from Employer.

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. Redetermine Petitioner's eligibility for FAP benefits with consideration of the Verification of Employment submitted on [REDACTED] 2019 and resubmitted again on [REDACTED] 2019;

2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.



AMTM/jaf

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

Kimberly Kornoelje
MDHHS-Kent-Hearings
BSC3
M Holden
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Petitioner

