



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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[REDACTED]
[REDACTED]

Date Mailed: March 6, 2020
MOAHR Docket No.: 20-000906
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 March 2, 2020 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Maia Elvine-Fair, Assistance Payments Supervisor, and Cynthia Powell, Assistance Payments Worker. During the hearing, a 52-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-52.

Petitioner requested the hearing to challenge the Department's actions with respect to Petitioner's Food Assistance Program (FAP) and Medicaid (MA) benefits. At the beginning of the March 2, 2020 hearing, Petitioner indicated that the MA benefits were no longer an issue. Petitioner requested to withdraw the hearing request as it related to MA. The Department did not object. There being good cause to approve the request to withdraw, Petitioner's hearing request with respect to her MA benefits is hereby dismissed.

ISSUE

Did the Department properly determine Petitioner's FAP benefits, effective February 1, 2020?

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 resides with her husband and their four minor children.

2. Petitioner is a full-time college student.
3. Petitioner was an ongoing recipient of FAP benefits from the Department.
4. On November 26, 2019, the Department received a change report from Petitioner. Therein, Petitioner indicated that household income had changed in two ways. One, Petitioner's household was no longer receiving financial assistance from friends. Two, Petitioner's household began receiving income from Petitioner's husband's employment. Exhibit A, pp. 11-14.
5. Petitioner's husband was earning approximately \$ [REDACTED] every two weeks. Exhibit A, p. 15.
6. On January 6, 2020, the Department issued to Petitioner a Notice of Case Action informing Petitioner that she was eligible for \$128 per month in FAP benefits, effective February 1, 2020. The document included a budget summary that detailed all of the inputs the Department used in the calculation. Exhibit A, pp. 32-36.
7. On [REDACTED] 2020, Petitioner submitted a hearing request objecting to the Department's actions with respect to the household's FAP and MA benefits. As stated above, Petitioner withdrew the hearing request with respect to MA on the record during the March 2, 2020 hearing.

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 reduction of her household's monthly FAP benefits from \$ [REDACTED] to \$ [REDACTED], effective February 1, 2020. Petitioner was notified of the change via a January 6, 2020 Notice of Case Action. The Notice of Case Action included a summary of the budget that was used to determine the monthly allotment.

An individual who is enrolled at least half-time in an institution of higher education is considered in student status and shall be ineligible for FAP benefits unless that person meets certain exemptions. 7 CFR 273.5(a) and (b); BEM 245 (January 2020), pp. 3-5. Department policy states that a “person remains in student status while attending classes regularly.... Student status does not continue if the student... does not intend to register for the next school term.” BEM 245, p. 5. One of the ways that an individual in student status may become eligible for FAP benefits is for that individual to work at least an average of 20 hours per week. BEM 245, p. 5.

Petitioner’s household consisted of herself, her husband, and their four minor children. However, the household size was determined to be only five people, with Petitioner removed from the group. Per law and Department policy, the Department properly removed Petitioner from the FAP group, resulting in a household of five.

The Notice of Case Action also included a budget that showed the Department determined Petitioner’s monthly household income to be \$██████, all of which was earned. In support of that conclusion, the Department offered a paycheck stub showing that Petitioner’s husband received \$██████ gross wages every two weeks. The Department testified that no other income was taken into consideration.

To determine monthly earned income when an individual is paid every two weeks, the Department is required to multiply the amount received every two weeks by 2.15 to get the monthly total. BEM 505 (October 2017), p. 8. Thus, the \$██████ must be multiplied by 2.15 to calculate a monthly earned income figure for that employment. Multiplying that figure by 2.15 results in a monthly earned income of \$██████. The Department budgeted \$██████ per month as Petitioner’s earned income, which based on the evidence presented, was incorrect.

Petitioner’s monthly earned income was \$██████. Earned income is reduced by a 20 percent earned income deduction. BEM 550 (January 2017), p. 1; BEM 556 (July 2019), p. 3. Subtracting the 20% earned income deduction from Petitioner’s earned income results in a post-deduction total of \$██████. That figure is further reduced by taking out the standard deduction applicable to Petitioner’s group size, which is \$203, resulting in an adjusted gross income of \$██████. Petitioner was not eligible for any other deductions for child support, dependent care, or medical expenses.

Likewise, Petitioner was not eligible for the excess shelter deduction. Petitioner was not credited with any housing expenses due to a failure to verify but was eligible for the h/u standard of \$518. Adding the expenses Petitioner qualified for together, Petitioner had monthly shelter expenses of \$518. The excess shelter deduction is calculated by subtracting from the \$518 one half of the adjusted gross income of \$██████ which is \$██████. The remaining amount, if it is greater than \$0, is the excess shelter deduction. In this case, the remaining amount is less than zero, which means that the Department properly determined that Petitioner was not eligible for the excess shelter deduction. Petitioner’s net income of \$██████ is thus the same as Petitioner’s adjusted gross

income. The Department incorrectly calculated the net income to be \$ [REDACTED]. The Food Assistant Issuance Table shows \$149 in benefits for \$ [REDACTED] net income for a household of five. RFT 260 (October 2019), p. 29. This is not the amount determined by the Department.

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 determined Petitioner's eligibility for FAP benefits, effective February 1, 2020.

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. Promptly issue to Petitioner a supplement of \$21 to cover the difference between the \$ [REDACTED] of FAP benefits issued in February 2020 and the \$ [REDACTED] in FAP benefits that Petitioner was eligible for that month;
2. Redetermine Petitioner's eligibility for FAP benefits, effective March 1, 2020, ongoing;
3. If any eligibility-related factors are unclear, inconsistent, contradictory, or incomplete, follow Department policy regarding verifications;
4. If Petitioner is eligible for additional FAP benefits that were not provided, ensure that a prompt supplement is issued; and
5. Notify Petitioner in writing of its decisions.

JM/tm



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

DHHS

Courtney Jenkins
22 Center Street
Ypsilanti, MI
48198

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: FAP: M. Holden; D. Sweeney
Washtenaw County AP Specialist (4)