



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: May 28, 2020
MOAHR Docket No.: 20-001706
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 May 21, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Eileen Kott, Family Independence Manager.

ISSUES

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefit case?

Did the Department properly deny Petitioner's FAP benefit application?

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 an ongoing FAP recipient.
2. On [REDACTED], 2020, Petitioner completed a semi-annual related to her FAP benefit case (Exhibit A, pp. 7-9).
3. Petitioner's household consisted of herself and her three children.
4. Petitioner had unearned income in the form of child support (Exhibit A, p. 58).

5. Petitioner had earned income in the form of Child Development and Care (CDC) provider income (Exhibit A, pp. 53-55).
6. On January 31, 2020, the Department sent Petitioner a Notice of Case Action (NOCA) informing her that her FAP benefit case was closing effective February 1, 2020, ongoing, for exceeding the gross income limit (Exhibit A, pp. 10-14).
7. On [REDACTED], 2020, Petitioner submitted an application for FAP benefits (Exhibit A, pp. 29-35).
8. The Department denied Petitioner's application for FAP benefits for exceeding the net income limit (Exhibit A, p. 43).
9. On February 21, 2020, Petitioner submitted a request for hearing disputing the Department's actions.

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 was an ongoing FAP recipient. On [REDACTED], 2020, Petitioner completed a semi-annual related to her FAP benefit case. The Department determined that Petitioner exceeded the gross income limit for her group size. A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550 (January 2017), p. 1. Gross income limitations are based on group size and are set forth in RFT 250. As a result, the Department closed Petitioner's FAP benefit case. The Department presented a FAP gross income budget to establish that Petitioner exceeded the gross income limit (Exhibit A, pp. 26-27).

The Department testified that Petitioner indicated on her semi-annual that she had three children living in her household. Petitioner later disclosed that one of her children was no longer residing in her household. However, at the time the semi-annual was processed, the Department considered Petitioner to have a household size of four.

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. BEM 505, pp. 7-9. Income received weekly is multiplied by a 4.3 multiplier. BEM 505, pp. 7-9. Income received twice per month is added together. 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 (January 2020), pp. 6-7.

Per the budget provided, the Department included earned income in the amount of \$5,851 per month. The Department presented Petitioner’s CDC provider Consolidated Inquiry (CI) report showing the income she received as a daycare provider (Exhibit A, pp. 59-61). Petitioner received CDC provider payments on November 21, 2019, in the gross amount of \$456.50; on December 5, 2019, in the gross amount of \$456.50; on December 19, 2020, in the gross amount of \$5,016.90; and on January 3, 2020, in the gross amount of \$694.20. It is unclear as to how the Department obtained the \$5,851 figure. However, the Department testified that it did include Petitioner’s payment on December 19, 2020, in the amount of \$5,016.90 to calculate her standard monthly earned income.

At the hearing, Petitioner testified that the \$5,016.90 figure was a lump sum payment. Petitioner stated she had been providing care to children since September 2019, without receiving payment. When the children’s CDC application was approved, Petitioner billed for care provided for a three-month period. Petitioner stated that her regular payments are closer to the \$456.50 figures.

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. The Department can use income from the past 60 or 90 days for fluctuating or irregular income if: the past 30 days is not a good indicator of future income and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. BEM 505, p. 6. Additionally, the Department is to discard any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 5-6.

Upon review of Petitioner’s CDC provider payments, it is clear that Petitioner does not receive warrants as large as \$5,016.90 on a regular basis. Petitioner’s testimony that the figure was for a lump sum payment was credible. The Department should have

taken into consideration that Petitioner does not regularly receive such large sums on a monthly basis. Therefore, the Department did not properly calculate Petitioner's earned income. As it follows, the Department failed to establish that it properly followed policy when it closed Petitioner's FAP benefit case.

Although the Department failed to establish that it properly closed Petitioner's FAP benefit case, the Department presented evidence that it reprocessed Petitioner's FAP eligibility subsequent to the closure. Petitioner submitted a FAP application on [REDACTED], 2020, and Petitioner's FAP eligibility was redetermined. The Department determined that Petitioner exceeded the net income limit for her group size. A non-categorically eligible non-Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. BEM 550 (January 2017), p.1. The Department presented a FAP budget to establish that Petitioner exceeded the net income limit for her group size (Exhibit A, pp. 45-47).

The Department testified that when processing Petitioner's FAP application, it included three people in Petitioner's group. The Department stated that Petitioner reported that one of her children was residing outside of the home. At the hearing, Petitioner stated that her daughter was living with her aunt three days per week, while attending school. Petitioner testified that her daughter resided in her home the other four days of the week. Petitioner's child was 19 years old at the time the application was submitted. Petitioner's child was a full-time college student and was not employed.

FAP budget calculations require the consideration of the group size. The Department will determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. BEM 212 (July 2019), p. 1. The FAP group composition is established by determining all of the following: who lives together, the relationship(s) of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. BEM 212, p. 6. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p. 1.

A person is in student status if she is: age 18 through 49 and enrolled half-time or more in a: vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate, or a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245 (January 2020), p. 3-4. In order for a person in student status to be eligible, they must meet one of the criteria set forth in BEM 245, such as being employed 20 hours per week. BEM 245, p. 5.

Petitioner's daughter should have been included in her FAP group, as she primarily resided with Petitioner, and was under the age of 22 years. However, as Petitioner's daughter was a full-time college student and did not meet one of the criteria set forth in BEM 245, she is an ineligible group member. Therefore, the Department properly determined Petitioner's FAP eligibility based on a group size of three.

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. BEM 505, pp. 7-9. Income received weekly is multiplied by a 4.3 multiplier. BEM 505, pp. 7-9. Income received twice per month is added together. 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 (January 2020), pp. 6-7.

When considering Petitioner's eligibility related to the [REDACTED], 2020 FAP application, the Department determined Petitioner had a household earned income amount of \$3,121. Petitioner was paid on January 3, 2020, in the gross amount of \$694.20 and \$913.00; on January 16, 2020, in the gross amount of \$459.10 and \$694.20; and on January 30, 2020, in the gross amount of \$361.40 and \$456.50. Petitioner was irregularly paid. None of the payments Petitioner received in January 2020 were supplemental payments for care provided in previous months. The income Petitioner received in January 2020 accurately reflects Petitioner's regular income.

It is unclear as to how the Department obtained the \$3,121 figure. However, Petitioner's income in the 30 days previous to her application totaled \$3,578.40, which is larger than the figure used by the Department. As the miscalculation was in Petitioner's favor, the error is harmless.

When calculating child support income, the Department uses the monthly average of the child support payments received in the past three calendar months, unless changes are expected. BEM 505, p. 4. If there are known changes that will affect the amount of the payments in the future, the Department will not use the previous three months. BEM 505, p. 4. If the past three months' child support is not a good indicator of future payments, the Department will calculate an expected monthly amount for the benefit month based on available information and discussion with the client. BEM 505, p. 5.

The Department also included unearned income in the amount of \$81 in Petitioner's FAP budget, as a result of her receipt of child support income. The Department presented Petitioner's CI report related to her child support income (Exhibit A, p. 65). In November 2019, Petitioner received \$89.29; in December 2019, Petitioner received \$69.70; and in January 2020, Petitioner received \$86.02. When averaging the figures, it

results in a standard monthly amount of \$81. Therefore, the Department properly calculated Petitioner's unearned income.

The deductions to income on the net income budget were also reviewed. There was no evidence presented that Petitioner's group includes a senior/disabled/veteran (SDV) household member. BEM 550 (January 2017), pp. 1-2. Thus, the group 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 (January 2020), p. 1; BEM 556 (January 2020), p. 3.

The Department will reduce the gross countable earned income by 20 percent and is known as the earned income deduction. BEM 550 (January 2017), p.1. The Department correctly determined Petitioner is entitled to an earned income deduction of \$625. Petitioner's FAP benefit group size of three justifies a standard deduction of \$161. RFT 255 (October 2018), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. Therefore, the budget properly excluded any deduction for dependent care or child support expenses.

In calculating the excess shelter deduction of \$0, the Department stated that it considered Petitioner's verified housing expense of \$686.62 and that she was entitled to the heat/utility standard of \$518. BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount, they added the total shelter amount and subtracted 50% of the adjusted gross income, which resulted in a deficit. Therefore, the Department correctly determined Petitioner was not entitled to an excess shelter deduction.

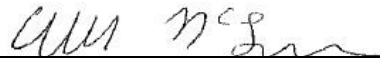
The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$2,416. As Petitioner was not entitled to an excess shelter deduction, her net income is also \$2,416. The net income limit for a group of three is \$1,778. RFT 250 (October 2019), p. 1. Therefore, the Department acted in accordance with policy when it denied Petitioner's application for FAP benefits for exceeding the net income limits.

As stated above, the Department failed to establish it properly closed Petitioner's FAP benefit case due to her exceeding the gross income limit. However, the Department did establish that Petitioner was not eligible for FAP benefits effective February 1, 2020, as she exceeded the net income limit. Thus, the Department acted in accordance with policy when it determined Petitioner was not eligible for FAP benefits effective February 1, 2020.

DECISION AND ORDER

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

EM/cg



Ellen McLemore

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

Via Email:

MDHHS-Wayne-76-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
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Petitioner – Via First-Class Mail:

