



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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[REDACTED]

Date Mailed: June 25, 2020
MOAHR Docket No.: 20-003266
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 June 22, 2020, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Nicole Phillips, Family Independence Manager. Malak Fawaz, Assistance Payments Worker served as Arabic Interpreter.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case due to excess income?

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 recipient of FAP benefits.
2. In connection with a Semi-Annual Contact Report (Semi-Annual), Petitioner's eligibility for FAP benefits was reviewed.
3. On April 25, 2020, the Department sent Petitioner a Notice of Case Action informing him that effective May 1, 2020, his FAP case would be closed because his gross income exceeded the income limit based on his group size.
4. After review, the Department determined that it had improperly included additional earned income in Petitioner's FAP budget. The Department removed the earned income from Petitioner's FAP budget and determined that Petitioner's income was

in excess of the net income limit, as he was receiving Unemployment Compensation Benefits (UCB) and Pandemic Unemployment Compensation (PUC) assistance weekly.

5. The Department issued a Notice of Case Action to Petitioner, advising that his FAP case would remain closed, as it was determined that his net income exceeded the income limit based on his group size.
6. On or around May 6, 2020, Petitioner requested a hearing disputing the Department's case actions and the closure of his FAP case.

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 requested a hearing disputing the closure of his FAP case effective May 1, 2020 due to excess income. Although Petitioner indicated he also disputed the amount of his FAP allotment prior to the case closure, Petitioner was informed that this issue would not be addressed, as it was not properly identified on his request for hearing, which only referenced the FAP case closure.

At the hearing, the Department testified that after processing the Semi-Annual and including Petitioner's UCB and PUC assistance to his FAP case, it determined that Petitioner's household had income in excess of the \$2,883 net income limit based on his six person group size. In order to be eligible for FAP benefits, FAP groups must have income below the applicable gross and/or net income limits based on their group size. BEM 550 (January 2017); BEM 213 (January 2020); BEM 212 (January 2019); RFT 250 (October 2019). The Department presented a FAP EDG Net Income Results Budget which was thoroughly reviewed. (Exhibit A, pp. 20-21)

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. For unearned income from UCB and PUC, the Department will count the gross amount and convert it to a standard monthly amount. BEM 503 (January 2020), pp. 36-37; BEM 505. 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 converted to a standard monthly 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 (January 2020), pp. 6-7.

The Department concluded that Petitioner's household had earned income of \$480, which consisted of his wife's monthly earnings as a caregiver. Petitioner confirmed that his wife received monthly gross income in the amount of \$480. The budget also shows unearned income of \$4,136, which the Department testified includes Petitioner's weekly UCB of \$362 and an additional \$600 in weekly PUC benefits, both of which are countable for FAP purposes. See Economic Stability Administration (ESA) Memorandum 2020-24: COVID-19 CARES Act Unemployment Insurance Payments. The Department testified that because the payments are made on a biweekly basis, it multiplied the average of \$1,924 by the 2.15 multiplier to determine the gross monthly unearned income of \$4,136. Petitioner confirmed receipt of the UCB and PUC in the amounts identified by the Department and upon review, the earned income was properly calculated.

The deductions to income on the net income budget were also reviewed. There was no evidence that Petitioner's FAP group included a senior/disabled/veteran (SDV) member. BEM 550 (January 2017), pp. 1-2. Thus, the household 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 (April 2019), p. 1; BEM 556 (April 2018), p. 3.

The Department properly applied a \$96 earned income deduction, which is 20% of the \$480 in 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 \$234 which was based on Petitioner's confirmed group size of six. RFT 255 (January 2020). The budget shows an excess shelter deduction of \$0. The Budget Summary in the Notice of Case Action accurately reflects \$800 in housing expenses from monthly rent and the \$518 heat and utility standard, which covers all heat and utility costs including cooling. FAP groups that qualify for this standard do not receive any other individual utility standards. Upon review, because 50% of Petitioner's adjusted gross income is greater than his total shelter amount and because there was no SDV member in the household, the excess shelter deduction of \$0 was properly determined. BEM 556, pp.5-6.

After further review, the Department properly determined Petitioner's total income of \$4,616 and took into consideration the appropriate deductions to income including the \$96 earned income deduction and the \$234 standard deduction. Because Petitioner's net income of \$4,286 was in excess of the \$2,883 net income limit for his six person FAP group, the Department properly closed the FAP case due to excess income.

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 closed Petitioner's FAP case effective May 1, 2020, as his net income exceeded the income limit.

DECISION AND ORDER

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

ZB/tm



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

Tara Roland 82-17
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Petitioner

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