



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: August 3, 2020
MOAHR Docket No.: 20-004265
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 July 30, 2020 from separate locations due to COVID-19. The Petitioner was self-represented. The Department of Health and Human Services (Department) did not appear for the hearing.

ISSUE

Did the Department properly exclude Petitioner's son from her Food Assistance Program (FAP) case?

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

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 lives with her 3 minor daughters and 19-year-old son.
2. Petitioner's son is unemployed and no longer in school due to COVID-19.
3. Petitioner applied for FAP benefits in [REDACTED] 2020 when her hours were reduced at work due to the COVID-19 pandemic.
4. Petitioner's hours were reduced to 18 hours per week at \$[REDACTED] per hours.
5. Effective May 1, 2020, Petitioner was laid off from her employment due to COVID-19.

6. Petitioner applied for unemployment benefits and received the full Unemployment Compensation Benefit (UCB) rate of \$ [REDACTED] per week in addition to the Pandemic Emergency Unemployment Compensation (PEUC) of \$ [REDACTED] per week.
7. The Department closed Petitioner's FAP case and did not consider Petitioner's son's presence in the home.
8. Petitioner requested a hearing disputing the Department's determination of FAP eligibility.

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 closure of her FAP case and the Department's failure to consider her son's presence in the home.

Policy provides that FAP groups are determined by who lives together, the relationships of those living together, whether they purchase and prepare food together, and if there are any special living arrangements which must be considered. BEM 212 (July 2019), p. 1. Parents and their children under 22 years of age who live together must be in the same group. *Id.* Additional considerations are made for individuals enrolled in a post-secondary education program. BEM 212, p. 9; BEM 245 (January 2020), p. 2. A person is considered to be in student status if they are between the ages of 18 and 49, enrolled half time or more in a: vocational, trade, business, or technical school requiring a high school diploma or equivalent certificate, or a regular curriculum of a college or university offering degree programs. BEM 245, pp. 3-4.

As a result of COVID-19, Petitioner's son was not in school and was not working. In addition, he is 19 years of age. Therefore, he is a mandatory group member and is not excluded from the group due to student status.

Next, to determine whether the Department properly calculated Petitioner's FAP benefit rate, an evaluation of the Department's budget calculations is necessary, starting with

income. Since the Department did not appear for the hearing, Petitioner's testimony is used to determine whether she would be eligible for FAP or not.

All countable, gross 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), p. 1. 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. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Income received on a weekly basis is multiplied by 4.3 to determine a standard monthly amount. BEM 505, p. 8

At the time of Application, Petitioner was working part-time earning \$16.75 per hour for 18 hours per week. Therefore, her gross income was \$1,340 per week and her standardized monthly income was \$5,762.00 per month. For a group size of five, the gross income limit is \$5,030.00 per month. RFT 250 (October 2019), p. 1; BEM 550 (January 2017), p. 1. Petitioner would be over the income limit and ineligible for FAP benefits.

Evidence was presented that Petitioner's income changed effective May 1, 2020 due to the loss of employment and gain of UCB and PEUC. The evidence is unclear as to when the Department made its decision and the date of Petitioner's application. Therefore, Petitioner's eligibility based upon the UCB and PEUC is also evaluated here. Petitioner received the \$[REDACTED] weekly UCB benefit plus the \$[REDACTED] PEUC benefit. The Economic Stability Administration has provided guidance that PEUC payments are to be considered in the FAP budget as unearned income. ESA 2020-24 Memorandum (April 17, 2020). In addition, UCB is considered unearned income and budgeted for purposes of FAP. BEM 503 (January 2020), pp. 36-37. Therefore, her total weekly income was \$[REDACTED] and her standardized monthly income was \$[REDACTED]. Petitioner's income when receiving unemployment benefits fell below the gross income limit. Therefore, the evaluation continues to determine her net income and potential benefit.

After consideration of income, the Department considers all appropriate deductions and expenses. No one in the household is a Senior, Disabled, or Disabled Veteran. BEM 550. Therefore, she 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.

BEM 554 (January 2020), p. 1; BEM 556 (January 2020), pp. 3-6.

Petitioner does not have any dependent care or child support expenses. With a group size of five, Petitioner is eligible for the Standard Deduction of \$203.00. RFT 255 (January 2020), p. 1.

After consideration of all these expenses, Petitioner's Adjusted Gross Income (AGI) should have been \$ [REDACTED]

Once the Adjusted Gross Income is calculated, the Department must then consider the Excess Shelter Deduction. Petitioner has a mortgage expense of \$895.00 per month and a homeowner's insurance expense of \$183.33 per month. Petitioner also is responsible for all utilities including heat, electric, water, sewer, trash, and phone services. Therefore, she is eligible for the heat and utility standard deduction (H/U) of \$518.00 per month. Individuals eligible for the H/U are not eligible for any other utility standards. BEM 554, p. 15.

Once each utility standard is considered, the housing expense and utility standards are added together for a total housing expense of \$1,597.00. BEM 556, p. 5. Petitioner's total housing expense is then reduced by half of her AGI (\$1,967.00) resulting in a negative number. *Id.* Since the calculation results in a negative number, Petitioner does not have an excess shelter cost and is not eligible for an Excess Shelter Deduction. *Id.*

If Petitioner was eligible for an Excess Shelter Deduction, the deduction would then be subtracted from her AGI to achieve her Net Income. BEM 556, pp. 5-6. Since Petitioner is not eligible for the deduction, her AGI is equal to her Net Income of \$ [REDACTED]. At this point, Petitioner's Net Income is considered against the Net Income Limit for a group size of five at \$2,515.00 per month. Petitioner's Net Income is greater than the Net Income Limit and she is ineligible for FAP benefits. RFT 250, p. 1; BEM 550, p. 1.

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.

DECISION AND ORDER

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

AM/



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

Kara Gubancsik
30755 Montpelier Drive
Madison Heights, MI 48071

Petitioner

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