



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], MI [REDACTED]

Date Mailed: September 16, 2020
MOAHR Docket No.: 20-004874
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 September 10, 2020. [REDACTED] the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department), was represented by John Fankhauser, Eligibility Specialist (ES).

During the hearing proceeding, the Department’s Hearing Summary packet was admitted as Exhibit A, pp. 1-35.

ISSUE

Did the Department properly terminate 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. On April 29, 2020, the Department issued a Notice of Case Action stating that FAP was approved for a household size of three for Petitioner, [REDACTED] and [REDACTED]. The notice stated that [REDACTED] was registered for work due to participation in FAP. The Simplified Reporting portion of the notice indicated a household size of four and income limit of \$2,311.00. If the household had an increase in income that was over the monthly limit, this had to be reported to the Department by the 10th of the following month. (Exhibit A, pp. 27-31)

2. A consolidated income inquiry search showed that Petitioner had earnings of \$5,289.00 in the first quarter of 2020 and did not have any earnings in the second quarter of 2020. (Exhibit A, pp. 12-13)
3. A consolidated income inquiry search showed that Anthony Maliszewski had earnings of \$6,286.00 in the first quarter of 2020 and \$1,612.00 in the second quarter of 2020. (Exhibit A, pp. 14-15)
4. Anthony Maliszewski also received Unemployment Compensation Benefits (UCB) starting the week ending April 11, 2020. (Exhibit B, pp. 16-17)
5. On July 6, 2020, a Notice of Case Action was issued to Petitioner stating the FAP case would be closed effective August 1, 2020, due to monthly income (\$6,084.00) in excess of the gross monthly income limit (\$2,311.00), and a group member failed to participate in employment and/or self-sufficiency related activities or quit a job; were fired; or reduced hours of employment without good cause. (Exhibit A, pp. 7-11)
6. On July 21, 2020, Petitioner filed a hearing request contesting the Department's determination. (Exhibit A, pp. 4-6)

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.

BEM 550 addresses FAP income budgeting. In part, this policy states:

A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits.

A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits.

Use only available, countable income to determine eligibility. The Bridges Eligibility Manual (BEM) 500 series defines

countable income. BEM 505 defines available income and income change processing. This item describes income budgeting policy.

Always calculate income on a calendar month basis to determine eligibility and benefit amounts. Use income from a month specified in this item for the benefit month being considered.

Budget the entire amount of earned and unearned countable income. Gross countable earned income is reduced by a 20 percent earned income deduction. Every case is allowed the standard deduction shown in Reference Tables Manual (RFT) 255.

Document income budgeting on either a manually-calculated or an automated FAP worksheet.

BEM 550, January 1, 2017, p. 1.
(Underline added by ALJ)

The Department converts stable and fluctuating income that is received more often than monthly to a standard monthly amount. The Department uses the following methods: multiply weekly income by 4.3; multiply amounts received every two weeks by 2.15; add amounts received twice a month. This conversion takes into account fluctuations due to the number of scheduled pays in a month. BEM 505, October 1, 2017, p. 8.

BEM 212 addresses FAP group composition and indicates spouses who are legally married and live together must be in the same group. Further, parents and their children under 22 years of age who live together must be in the same group. (BEM 212. July 1, 2019, p. 1) A disqualified person is one who is ineligible for FAP because the person refuses or fails to cooperate in meeting an eligibility factor. Individuals are disqualified for the following reasons: failure to meet citizenship/alien status (see BEM 225); failure to provide a social security number (see BEM 223); failure to comply with employment-related activities (see BEM 233B); intentional program violation (see BAM 720); voluntary quit (see BEM 233B); failure to comply with a quality control review (see BAM 105); child support noncooperation (see BEM 255); traffickers (see BEM 203); parole and probation violators (see BEM 203); drug-related felony, 2nd offense (see BEM 203); divestment (see BEM 406); and time limited (BEM 620). (BEM 212. July 1, 2019, pp. 8-9)

Effective October 1, 2019, for a group size of three the FAP monthly gross income limit is \$2,311.00. For a group size of four the FAP monthly gross income limit is \$2,790.00. Similarly, the simplified reporting income limits are \$2,311.00 for a group size of three and \$2,790.00 for a group size of four. RFT 250, October 1, 2019, p. 1.

In this case, the Department's evidence is inconsistent regarding the applicable FAP group size. For example, the April 29, 2020, Notice of Case Action states that FAP was approved for a household size of three for Petitioner, [REDACTED] and [REDACTED]. However, the notice also stated that a fourth person, [REDACTED] was registered for work due to participation in FAP. The Simplified Reporting portion of the notice indicated a household size of four but stated the applicable income limit was \$2,311.00. (Exhibit A, pp. 27-31) Effective October 1, 2019, \$2,311.00 is the FAP monthly gross income limit/simplified reporting income limit for a group size of three. For group size of four the FAP monthly gross income limit/simplified reporting income limit is \$2,790.00. RFT 250, October 1, 2019, p. 1.

The applicant address listed on the UCB compensation search result and Health Care Coverage Determination Notice indicate [REDACTED] is in the home with the rest of Petitioner's FAP group. (Exhibit A, pp. 16 and 32-33) The Department's evidence did not specify [REDACTED] relationship to Petitioner or the other household members. Petitioner's testimony indicated the three persons FAP was approved for were herself and her two children, ages 14 and 16. (Petitioner Testimony). Additional information is needed to determine whether [REDACTED] should have been included in the FAP group; for example, if he was a mandatory group member or if he was a disqualified person.

Whether [REDACTED] should be included in the FAP group affects the applicable income limit and whether his income is counted in determining whether the FAP group exceeded the applicable limit. It appears that the Department may not have considered [REDACTED] to be part of Petitioner's FAP group because the income limit utilized was for a group size of three. However, it does appear that [REDACTED] income was counted when the Department determined that the FAP group exceeded the applicable income limit. It is not clear what specific month's income was utilized or how the Department calculated a monthly income of \$6,084.00. (Exhibit A, p. 8) However, Petitioner's quarterly wages were always less than \$6,084.00, let alone her monthly income. Further, Petitioner did not have any wages the second quarter of 2020. (Exhibit A, p. 13) There is no evidence that Petitioner received UCB. Additionally, it does not appear that the combination of Petitioner's wages as well as [REDACTED] wages and/or UCB for any specific month totaled \$6,084.00. (Exhibit A, pp. 12-17)

The Department's Hearing Summary asserts that Petitioner never reported changes or reported untimely, and that verifications were requested but not turned in. (Exhibit A, p. 1) Petitioner's testimony indicated that an employment verification form was given to [REDACTED] employer right when he first started, and the employer stated they would send it in to the Department. Petitioner assumed it was sent in and everything was taken care of. (Petitioner Testimony). Further, it is noted that the requests for verification included in the Department's evidence packet were not sent until well after the July 6, 2020, Notice of Case Action terminating the FAP case. Specifically, on July 21, 2020, a Wage Match Client Notice was issued to Petitioner for [REDACTED] due to the quarterly income reported of \$6,286.00. The due date

to return the form or paystubs was August 20, 2020. (Exhibit A, pp. 18-20) Further, on July 21, 2020, a Verification Checklist was issued to Petitioner requesting proof of [REDACTED] income as of November 1, 2019, as well as a copy of Petitioner's July paystubs. The due date was July 31, 2020. It is noted that the Verification Checklist indicates the information was requested to determine eligibility for the Medicaid case, not the FAP case. (Exhibit A, pp. 21-26) Accordingly, it does not appear that the Department requested verifications prior to issuing the July 6, 2020, Notice of Case Action terminating the FAP case.

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 FAP would close due to income in excess of program limits. The Department's evidence was not consistent regarding the FAP group size, which would determine the applicable income limit and whose income is considered. Further, it was unclear what month's income was utilized for this determination and how the Department calculated a household income of \$6,084.00.

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 retroactive to the August 1, 2020, effective date in accordance with Department policy.
2. Issue written notice of the determination in accordance with Department policy.
3. Supplement for lost benefits (if any) that Petitioner was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.

CL/ml



Colleen Lack
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

Barbara Hamilton
Lenawee County DHHS – via electronic
mail

BSC4 – via electronic mail

M. Holden – via electronic mail

D. Sweeney – via electronic mail

Petitioner

[REDACTED] – via first class mail

[REDACTED]
MI [REDACTED]