



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: September 25, 2020
MOAHR Docket No.: 20-005307
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 September 23, 2020. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Mailka Mason, Services Specialist, and Sabrina Hopkins, Assistance Payments Supervisor.

ISSUE

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

Did the Department properly process and deny Petitioner's FAP Application dated [REDACTED] 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. On or before June 6, 2020, the Department became aware of Unemployment Compensation Benefit (UCB) being issued under Petitioner's name and Social Security Number.
2. On June 6, 2020, the Department issued a Notice of Case Action to Petitioner informing her that her FAP case was closing effective July 1, 2020 due to excess

net income and that \$4,285.00 in unearned income was being budgeted for a group size of three.

3. Petitioner receives \$982.00 in Retirement Survivors Disability Insurance (RSDI) benefits per month.
4. Petitioner's son receives \$317.00 in RSDI benefits per month.
5. Petitioner denies receipt of any UCB in May 2020.
6. Petitioner admits filing for UCB in July 2020.
7. Petitioner asserts that all UCB issued in May 2020 were the result of identity theft and should not be budgeted in her FAP budget.
8. Petitioner filed an Affidavit of Identity Theft with the (Unemployment Insurance Agency) then provided a copy to the Department.
9. On [REDACTED] 2020, Petitioner submitted an Application for FAP benefits.
10. Petitioner never received a decision regarding her [REDACTED] 2020 Application, but the parties agree that Petitioner was denied FAP benefits.
11. On August 3, 2020, the Department received Petitioner's request for hearing disputing the Department's denial of FAP benefits.

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, the Department closed Petitioner's FAP benefits and denied her FAP Application due to excess income. To determine whether the Department properly determined Petitioner's FAP eligibility, an evaluation of the Department's budget calculations is necessary, starting with income. All countable, gross earned and unearned income received and 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. For irregular income, the Department must determine a standard monthly amount by adding the amounts entered together and dividing by the number of months used. BEM 505, p. 9.

Petitioner receives \$982.00 per month in RSDI and her son receives \$317.00 per month in RSDI. Since this income is already received monthly, it does not need to be standardized.

The Department asserts that Petitioner also received UCB benefits in May of 2020 which prompted the closure of her FAP benefits due to excess income. Petitioner denies receipt of the benefits in May 2020 and asserts that she was the victim of identity theft. In addition, Petitioner admits that she filed a claim for UCB in July 2020 after her employment with [REDACTED] ended. Petitioner submitted a copy of the Affidavit of Identity Theft to the Department as evidence to support her claim, but the Department is unwilling to accept it because there is no evidence to show that she actually submitted it to the Unemployment Insurance Agency or that the Agency was reviewing her UCB case. Despite the unwillingness to recognize Petitioner's affidavit, the Department agrees that because of COVID-19 and the unusual circumstances presented, the Agency is significantly delayed in processing cases and responding to individuals. The Department also admits that the Agency has had a significant increase in fraudulent claims and identity theft during the pandemic which has been discussed by the media at length. Given the fact that Petitioner is denying receipt of May 2020 UCB, but admitting to July 2020 UCB and that identity theft and delays in processing UCB during the pandemic is widely known, Petitioner's statements are credible. The UCB income should not have been budgeted for May 2020, June 2020, or July 2020.

Since the UCB income for May, June, July 2020 is excluded, the only income that should have been considered at the time of the June 6, 2020 Notice of Case Action is Petitioner's and her son's RSDI totaling \$1,299.00.

After consideration of income, the Department considers all appropriate deductions and expenses. There was evidence presented that the Petitioner is a Senior, Disabled, or Disabled Veteran (SDV). 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.
- Medical deduction for expenses greater than \$35.00.

BEM 554 (October 2019), p. 1; BEM 556 (July 2019), pp. 3-6.

The Department budgeted \$0.00 for a child support, dependent care, and medical expenses. Petitioner did not dispute that she does not have these expenses. The Department also budgeted the standard deduction of \$161.00 for a group size of three in accordance with Department policy. RFT 255 (January 2020), p. 1. After consideration of all these expenses, Petitioner's Adjusted Gross Income (AGI) is \$1,138.00.

Once the Adjusted Gross Income is calculated, the Department must then consider the Excess Shelter Deduction. The Department budgeted \$700.00 for Petitioner's housing expense. Petitioner did not dispute the amount budgeted for her housing expense. The Department also budgeted a heat and utility standard deduction (H/U) of \$518.00 which Petitioner does not dispute. RFT 255, p. 1; BEM 554, p. 22. Once each utility standard is considered, the housing expense and utility standards are added together for a total housing expense of \$1,218.00. BEM 556, p. 5. Petitioner's total housing expense is then reduced by half of her AGI (\$569.00) resulting in an Excess Shelter Deduction of \$649.00. *Id.* The deduction is then subtracted from her AGI to achieve her Net Income of \$489.00. BEM 556, pp. 5-6. At this point, Petitioner's Net Income would be considered against the FAP Net Income Limit for a group size of three which is \$1,778.00. RFT 250 (October 2019), p. 1; BEM 550 (January 2017), p. 1. Petitioner's Net Income is below the Net Income limit. Therefore, Petitioner is eligible for FAP benefits and the closure of her FAP case effective July 1, 2020 was improper.

Since the closure of Petitioner's FAP case was improper and her case should have remained open, there should have been no need for a [REDACTED] 2020 FAP Application. Despite this, Petitioner experienced changes in her income in July 2020 which would affect her eligibility and may have been reported via her Application. Neither party submitted a copy of Petitioner's Application, nor any verifications or the Notice of Case Action associated with it. Therefore, it is impossible to determine whether Petitioner's FAP Application was properly denied.

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 closed Petitioner's FAP case effective July 1, 2020 and failed to satisfy its burden of showing that it acted in accordance with Department policy when it processed any reported changes with the [REDACTED] 2020 Application.

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. Reinstate Petitioner's FAP benefits effective July 1, 2020;
2. Issue supplements for July 2020 in accordance with Department policy;
3. Redetermine Petitioner's eligibility effective as of the [REDACTED] 2020 Application (reported changes);
4. If otherwise eligible based upon the [REDACTED] 2020 Application, issue supplements to Petitioner for benefits not previously received; and,
5. Notify Petitioner in writing of its decision.

AM/tm



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

Via Email:

MDHHS-Wayne-57-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

