



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.: 20-005504  
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 Lisa Young, Family Independence Manager.

### **ISSUE**

Did the Department properly close Petitioner's Food Assistance Program (FAP) because of income over the income limit?

### **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 June 15, 2020, Petitioner was paid total lottery winnings of \$5,312.00 in two lump sum payments.
3. On [REDACTED] 2020, Petitioner reported her lottery winnings to the Department via a Change Report.
4. On July 14, 2020, the Department processed Petitioner's reported change and closed her FAP case.
5. On [REDACTED] Petitioner submitted a new Application for FAP.

6. On the same day, the Department accepted verifications, completed an interview, and issued a Notice of Case Action to Petitioner informing her that her FAP case was closing effective August 11, 2020 for excess net income.
7. On August 15, 2020, the Department received Petitioner's request for hearing disputing the closure of her FAP benefits and denial of her FAP Application on an ongoing basis.

### **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 and denial of her FAP benefits on an ongoing basis. The Department's Notice of Case Action indicates that the closure was due to excess Net Income beginning August 11, 2020, ongoing.

Policy provides that when a FAP group wins the lottery or wins gambling and the value is \$3,500.00 or more, the FAP case is closed with timely notice for the negative action. BEM 403 (April 2020), p. 1. The Department is required to act on the reported change within ten days. BAM 220 (July 2020), p. 7. Timely notice requires that a notice be mailed to the client regarding the negative action at least 11 days before the intended negative action takes effect. BAM 220, pp. 4-5. All FAP groups closed because of gambling or lottery winnings remain ineligible until they meet allowable income and asset tests. BEM 403, p.1. The group's eligibility must be determined under regular FAP rules and will not be considered categorically eligible on the first approval after the winnings. *Id.*

Petitioner timely reported her lottery winnings of \$5,312.00 to the Department on [REDACTED] 2020 via a Change Report. With ten days to process the change and at least 11 days to implement it with notice to the client, Petitioner's FAP case would close effective August 1, 2020 which the Department did in accordance with policy. Then when Petitioner reapplied on [REDACTED] 2020, the Department should have taken action to verify Petitioner's income and assets as of August 2020. Policy provides that lump sum payments are treated as assets unless the lump sum payment includes a payment

intended as payment for the month in which it was paid. BEM 500 (July 2020), p. 7. Since the lottery payments were made in two lump sum payments in June, they never should have been considered as income, but instead as an asset. Therefore, the Department's denial of Petitioner's FAP Application due to excess net income based upon her lottery winnings was not in accordance with policy. The Department should have sought verification of Petitioner's assets at the time of her [REDACTED] Application and then determined her eligibility. It is notable that FAP asset limit is \$15,000.00. BEM 400 (July 2020), p. 5.

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 due to her lottery winnings, but did not act in accordance with Department policy when it denied her FAP application due to excess net income.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the closure of Petitioner's FAP case and **REVERSED IN PART** with respect to the denial of Petitioner's FAP Application.

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. Reprocess Petitioner's FAP Application dated [REDACTED] 2020;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and
3. Notify Petitioner in writing of its decision.



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**Amanda M. T. Marler**  
Administrative Law Judge  
for Robert Gordon, Director  
Department of Health and Human Services

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**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-17-Hearings  
M. Holden  
D. Sweeney  
BSC4  
MOAHR

**Petitioner – Via First-Class Mail:**

