



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: October 23, 2020
MOAHR Docket No.: 20-005879
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 October 21, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Ginger James-Williams, Assistance Payments Worker.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit eligibility?

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 [REDACTED], 2020, Petitioner submitted an application for FAP benefits (Exhibit A, pp. 7-12).
2. Petitioner's household consisted of Petitioner and her three minor children.
3. Petitioner's child had Retirement, Survivors and Disability Insurance in the gross monthly amount of \$295 (Exhibit A, pp. 17-18).
4. Petitioner's child had RSDI income in the gross monthly amount of \$202 per month.
5. Petitioner had Unemployment Compensation Benefit (UCB) income in the gross amount of \$[REDACTED] per week (Exhibit A, p. 23).

6. Petitioner had unearned income in the form of child support (Exhibit A, p. 22).
7. On August 31, 2020, the Department sent Petitioner a Notice of Case Action informing her that she was eligible for FAP benefits in the amount of \$128 per month (Exhibit A, pp. 25-27).
8. On September 9, 2020, Petitioner submitted a request for hearing disputing the Department's actions.

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 submitted an application for FAP benefits on [REDACTED], 2020. The Department determined Petitioner was eligible for FAP benefits in the amount of \$128 per month. The Department presented a FAP budget summary to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, p. 26).

Per the budget provided, the Department included \$2,101 in unearned income when determining Petitioner's FAP benefit amount. The Department testified that the \$2,101 figure comprised of UCB income, RSDI income, child support income and gifted income.

The Department presented a State Online Query (SOLQ) report for one of Petitioner's children showing he received \$295 per month in gross RSDI benefits. The Department testified that another one of Petitioner's children received \$202 per month in gross RSDI benefits. For RSDI, the Department counts the gross benefit amount as unearned income. BEM 503 (January 2020), p. 28. Petitioner confirmed those figures were correct. Therefore, the Department properly determined Petitioner's household RSDI income.

The Department stated that it included \$[REDACTED] in unemployment income in Petitioner's household unearned income amount. The Department presented Petitioner's UCB award letter showing that she received \$[REDACTED] per week in UCB income. A standard monthly amount must be determined for each income source used in the budget. BEM

505, pp. 7-8. Income received weekly is multiplied by a 4.3 multiplier. BEM 505, pp. 7-9. Petitioner's weekly UCB amount of \$ [REDACTED] multiplied by the 4.3 multiplier results in a standard monthly UCB amount of \$ [REDACTED]. Therefore, the Department properly calculated Petitioner's UCB income.

The Department testified that it also included \$ [REDACTED] in unearned income in the form of child support in Petitioner's FAP budget. When calculating child support income, the Department uses the monthly average of the child support payments received in the past three calendar months, unless changes are expected. BEM 505 (October 2017), p. 4. If there are known changes that will affect the amount of the payments in the future, the Department will not use the previous three months. BEM 505, p. 4. If the past three months' child support is not a good indicator of future payments, the Department will calculate an expected monthly amount for the benefit month based on available information and discussion with the client. BEM 505, p. 5.

The Department presented Petitioner's Consolidated Inquiry report showing her child support payments. Petitioner received a payment on May 1, 2020, in the amount of \$ [REDACTED]; on May 13, 2020, in the amount of \$ [REDACTED]; on June 3, 2020, in the amount of \$ [REDACTED]; on July 2, 2020, in the amount of \$ [REDACTED]; on August 3, 2020, in the amount of \$ [REDACTED]; and on August 11, 2020, in the amount of \$ [REDACTED]. The Department initially stated it averaged Petitioner's child support income from May, June and July 2020. When averaging the total child support income from those months, it results in a standard monthly amount of \$ [REDACTED]. Then the Department stated that it did not include the \$ [REDACTED] payment on May 13, 2020.

It is unclear how the Department obtained the \$ [REDACTED] figure. However, the only way to achieve such a high three-month average is to include the May 13, 2020 payment of \$ [REDACTED]. Petitioner stated that she generally receives \$ [REDACTED] per month in child support income. Petitioner testified it is extremely unusual for her to receive such a high value payment. Petitioner's testimony was credible and was supported by the other payments contained in the Consolidated Inquiry. Per policy, the \$ [REDACTED] payment amount should have been excluded, as it is not a good indicator of future payments. Therefore, the Department did not properly determine Petitioner's child support income. As it follows, the Department did not properly determine Petitioner's FAP eligibility.

DECISION AND ORDER

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 eligibility.

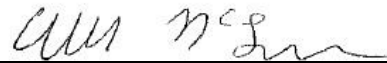
Accordingly, the Department's decision is **REVERSED**.

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 and reprocess Petitioner's [REDACTED], 2020 FAP application;
2. If Petitioner is eligible for additional FAP benefits, issue supplements she is entitled to receive; and
3. Notify Petitioner of its decision in writing.

EM/jem



Ellen McLemore
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-17-Hearings
BSC4-HearingDecisions
M. Holden
D. Sweeney
MOAHR

Petitioner – Via USPS:

