



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: December 7, 2020
MOAHR Docket No.: 20-006413
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 December 3, 2020. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Juanita Munoz.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) 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, the Department received Petitioner's Application for FAP benefits listing herself, [REDACTED] (DP), [REDACTED] (XG), [REDACTED] (SP), and [REDACTED] (SE) as household members; indicating that no one in the household was employed or had been in the last 30 days; that [REDACTED], [REDACTED], and [REDACTED] had income from unemployment; and that she had a rental expense of \$625.00 in addition to utilities.
2. On September 17, 2020, the Department issued a Notice of Case Action to Petitioner informing her that her FAP Application had been denied effective August 18, 2020 due to excess income and that [REDACTED] (EP) and [REDACTED] (SPII) were excluded from the group because they were no longer living with her.

3. Respondent went on a medical leave in October 2019.
4. After returning from medical leave, she immediately was laid off due to the pandemic.
5. Petitioner had an Unemployment Compensation Benefit (UCB) income of \$ [REDACTED] bi-weekly.
6. SP had UCB income of \$ [REDACTED] bi-weekly.
7. DP had UCB income of \$ [REDACTED] bi-weekly.
8. On October 6, 2020, the Department received Respondent's request for hearing disputing the determination of eligibility including income and group members.

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 Department's determination of eligibility and points to errors in group composition as well as consideration of income.

Group composition for FAP purposes is determined by who lives together, the relationships of those living together, whether they purchase and prepare food together, and whether there are any other special living arrangements. BEM 212 (July 2019), p. 1. Parents and their children under age 22 who live together must be in the same group. *Id.* Individuals who are not in the home are excluded from the group. BEM 212. Petitioner had concerns that EP and SP11 were included in the group even though they were not living in the home. The Notice of Case Action dated September 17, 2020 indicates next to their names "A group member is not or is no longer living with you. Therefore, his/her needs are not considered when determining your eligibility." Although their names are also listed next to the group's determination of eligibility based upon excess income, the FAP budgets presented by the Department show that a group size of five was budgeted which would include Petitioner, SP, DP, XG, and SE. Therefore, the Department did not error in consideration of Petitioner's group.

To determine whether the Department properly calculated Petitioner's FAP benefit rate, the evaluation first starts with consideration of all countable earned and unearned income available to the client; group composition policies specify whose income is countable. BEM 500 (July 2020), 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 income that is received bi-weekly, the Department is required to average the income and multiply it by 2.15 to determine the standardized amount. *Id.*

Petitioner's household has several sources of unearned income. Each person receives UCB on a bi-weekly basis. Petitioner receives \$ [REDACTED] bi-weekly which when standardized is \$ [REDACTED]. DP receives \$ [REDACTED] bi-weekly which when standardized is \$ [REDACTED]. Finally, SP receives \$ [REDACTED] bi-weekly which when standardized is \$ [REDACTED]. Therefore, the total household standardized unearned income is \$ [REDACTED].

The Department also budgeted earned income for Petitioner of \$ [REDACTED] per month in August 2020 but stopped the income in September 2020. However, Petitioner was laid off from her work as early as April 2020 due to the Pandemic and had been on medical leave as early as October 2019. Furthermore, Respondent indicated she was unemployed on the Application for benefits. Therefore, the income from employment never should have been budgeted at the time of Petitioner's Application in [REDACTED] 2020.

The group had no other sources of income; therefore, the total household standardized gross income is \$ [REDACTED].

After consideration of income, the Department considers all appropriate deductions and expenses. No evidence was presented that Petitioner's group includes a Senior, Disabled, or disabled Veteran (SDV) group member; therefore, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter deduction.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.

BEM 550 (January 2017), pp. 1-1; BEM 554 (August 2020), p. 1; BEM 556 (January 2020), pp. 3-6.

Petitioner does not have a child support or dependent care expense and the Department properly budgeted \$0.00 for these items. In addition, Petitioner has a group

size of five so she is eligible for the standard deduction of \$203.00 and that was properly budgeted. RFT 255 (January 2020), p. 1; BEM 556, p. 4.

After consideration of each of these deductions, Petitioner's Adjusted Gross Income (AGI) would be calculated by subtracting each of these expenses from her gross income. Therefore, Petitioner's AGI is \$ [REDACTED]

Once the AGI is calculated, the Department must then consider the Excess Shelter Deduction. BEM 554, p. 1; 7 CFR 273.9(d)(6). The Excess Shelter Deduction is calculated by adding Petitioner's Housing Costs to any of the applicable standard deductions and reducing this expense by half of Petitioner's AGI. BEM 556, pp. 4-7; 7 CFR 273.9(d)(6)(ii). Petitioner has a current rental expense of \$625.00 per month. In addition, to the housing expense, the Department considers a client's utility expenses. The heat and utility standard deduction (H/U) covers all heat and utility costs including cooling except actual utility expenses (repairs or maintenance). BEM 554 (October 2019), p. 15. Effective October 1, 2019, the H/U was \$518.00. RFT 255 (January 2020), p. 1. FAP groups that receive the H/U do not receive any other individual utility standards. *Id.* The expenses outlined here are the only expenses considered for purposes of calculating the FAP budget and eligibility determination. Petitioner's total housing cost is \$1,143.00 which is reduced by 50% of Petitioner's AGI (\$1,431.45) resulting in a negative number. *Id.* Since Petitioner does not have an excess cost of shelter greater than her income, she is not eligible for the excess shelter deduction.

Since Petitioner is not eligible for an excess shelter deduction, her AGI is equal to her Net Income, \$ [REDACTED]. *Id.* The Net Income Limit for a group size of five is \$2,515.00. RFT 260 (October 2019); BEM 550 (January 2017), p. 1. Petitioner's Net Income is greater than the Net Income Limit, she is ineligible for FAP benefits. Therefore, even though the Department erred in the consideration of Petitioner's former employment income, Petitioner is still ineligible for benefits as her Net Income is greater than the limit.

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 denied Petitioner's Application for FAP benefits due to excess net income.

DECISION AND ORDER

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



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

AMTM/cc

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-41-Hearings
BSC4-Hearing Decisions
M. Holden
D. Sweeney
MOAHR

Petitioner- Via USPS:

