



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: December 23, 2020
MOAHR Docket No.: 20-006873
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 9, 2020, from Lansing, Michigan. The Petitioner was represented by Petitioner [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Amber Gibson, Hearings Facilitator.

Department's Exhibit A pages 1-38 were admitted as evidence.

ISSUE

1. Did the Department properly deny Petitioner's request for Food Assistance Program (FAP) benefits?
2. Did the Department properly deny Petitioner's request for Child Development and Care (CDC) benefits?
3. Did the Department properly deny Petitioner's request for State Emergency Relief (SER)?

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 applied for CDC, SER and FAP benefits.

2. SER was denied for the Board of Water and Light bill because there was no past due amount of shut off notice.
3. On October 23, 2020, the Department sent Petitioner a Notice of Case Action indicating that her application for CDC was denied because Petitioner's gross household income exceeded the entry limit for the CDC program.
4. The Department determined that the income limit for a group size of four persons (children only) is \$2,838. Petitioner's income was \$3206.00.
5. On October 27, 2020, Petitioner filed a Request for Hearing to contest the negative actions.
6. On October 28, 2020, Petitioner's FAP case was cancelled for excess income.
7. Petitioner and her family remain eligible for Medical Assistance due to the COVID-19 pandemic; no Medicaid is being closed.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 Michigan Office of Administrative Hearings and Rules (MOAHR) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits, or services are provided.
- Delay of any action beyond standards of promptness.

- For FAP only, the current level of benefits or denial of expedited service. BAM 600 (April 1, 2017), pp 3-4.

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days. BAM 600, page 6

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.

FAP policy indicates:

Federal regulations at 7 CFR 271; 273 provides standards for the determination of Food Assistance Program budgeting. The Department follows the program reference manual, tables, charts, schedules, Table 240-1.

Income means a benefit or payment received by an individual which is measured in money. It includes money an individual owns even if not paid directly such as income paid to a representative. Income remaining after applying the policy in the income related items is called countable. This is the amount used to determine eligibility and benefit levels. Count all income that is not specifically excluded. BEM 500, page 1

Gross income is the amount of income before any deductions such as taxes or garnishments. This may be more than the actual amount an individual receives. BEM 500, pages 4-5

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. 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, page 1)

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.

In the instant case, Petitioner's household received total monthly \$ [REDACTED] in RSDI (Survivor's benefits) income.

Petitioner was given the standard deduction of \$212 and a medical deduction of \$81. $\$ \blacksquare - \$212 - \$81 = \$ \blacksquare$ in monthly adjusted gross income.

Petitioner pays \$800 per month in rent and she was given the heat and utility standard of \$547 for a total of \$1,347 in total shelter amount.

$\$1,347$ in total shelter amount - $\$ \blacksquare$ (50% of adjust gross income) = $\$619$ in adjusted excess shelter amount.

$\$ \blacksquare$ net income x .30 (net income divisor) = $\$ \blacksquare$

The maximum monthly FAP benefit for a five-person group = \$807.

$\$807$ maximum benefit - $\$ \blacksquare$ (30% of net income) = $\$0$ in monthly FAP benefit allotment.

A review of Petitioner's case reveals that the Department budgeted the correct amount of income received by Petitioner at the time of determination. Petitioner's deductions and shelter allotment are governed by Food Assistance Program policy and cannot be changed by the Department or this Administrative Law Judge. If Petitioner provides the Department with information that Petitioner now receives less monthly earned income, the Department can reassess Petitioner's eligibility for increased Food Assistance Program benefits.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

Pertinent CDC policy dictates:

Group composition is the determination of which persons living together are included in the Child Development and Care (CDC) program group. Use the definitions in this item to determine CDC group composition.

Program group means those persons living together whose income and assets must be counted in determining eligibility; see BEM 703, Eligibility Groups.

When CDC is requested for a child, each of the following persons who live together must be in the program group:

- Each child for whom care is requested.

- **Each child's legal and/or biological parent(s) or stepparent.**
- Each child's unmarried, under age 18, sibling(s), stepsiblings or half sibling(s).
- The parent(s) or stepparent of any of the above sibling(s).
- Any other unmarried child(ren) under age 18 whose parent, stepparent or legal guardian is a member of the program group. (BEM 205, pages 1-2)(Emphasis Added)

The applicant/client is the person who signs the application and who serves as primary contact with the Michigan Department of Health and Human Services (MDHHS). This person must live with the child(ren) for whom care is requested, and be one of the following in relation to the child(ren) needing care:

- Parent, stepparent or foster parent of the child.
- Another related person acting as caretaker to the child.
- Legal guardian of the child.
- An unrelated adult who is at least age 21 and whose petition for legal guardianship of the child is pending.
- An unrelated adult with whom MDHHS Children's Services has placed a child, subsequent to a court order identifying MDHHS as responsible for the child's care and supervision.
- The FIP grantee for the child.

A minor parent (unmarried and under age 18) may be the applicant only if his/her parent or legal guardian does not live in the home. If the minor parent's parent or legal guardian lives in the home, he/she must be the applicant. (BEM 205, page 2)

The Department caseworker stated that policy indicates that the parent is not a part of the CDC group composition but did not explain what policy or why Petitioner would not be a part of the CDC group.

The Department determined that only the children are part of the CDC group and not Petitioner. The Department determined that there were four people in the CDC group rather than five persons. However, the Department counted the income for five persons in the household when making this determination. The four children are aged seven and under according to the assistance application. Petitioner is disabled and the children's father is deceased.

In this case, the Department has not established by a preponderance of evidence why the children are the only persons counted in the household group but the parent's income is included in the determination.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

Low-income households who meet all State Emergency Relief (SER) eligibility requirements may receive assistance to help them with household heat and electric costs. Funding for energy services assistance is provided through the Low Income Home Energy Assistance Program (LIHEAP). A household may receive one SER payment for heat and one for non-heat electricity, up to the SER cap, each fiscal year.

An energy crisis is one of the following:

- An individual or household has a past due account or shut-off notice on an energy bill for his or her household.
- A residential fuel tank is estimated to contain no more than 25 percent of its heating fuel capacity.
- A stated need for household deliverable fuel or nontraditional fuel source such as wood, corn, cherry pits, etc.
- A notice that the balance of a prepayment account is below \$100.
- A statement from a licensed service provider indicating the homeowner's furnace is inoperable and in need of repair or replacement. (ERM 301, page 1 (October 1, 2020))

In the instant case, Petitioner did not have a shut off notice or energy crisis. Under the circumstances, the Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it determined that Petitioner was not eligible to receive State Emergency Relief because she did not have a utility emergency. The Department's action must be upheld under the circumstances.

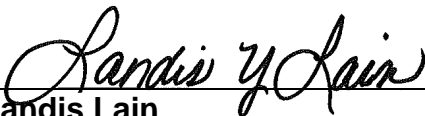
DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED in part as to Medical Assistance; State Emergency Relief and Food Assistance Program benefits, and REVERSED IN PART** with respect to **Child Development and Care** benefits.

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 CDC application to the date of closure;
2. Recalculate Petitioner's family group composition in compliance with Department policy;
3. Notify Petitioner of her eligibility or lack thereof.

LL/hb



Landis Lain
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

Ingham County via electronic mail

BSC2 via electronic mail

D. Smith via electronic mail

EQADHShearings via electronic mail

T. Bair via electronic mail

E. Holzhausen via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

L. Brewer-Walraven via electronic mail

Petitioner

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[REDACTED], MI [REDACTED]