



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 27, 2021
MOAHR Docket No.: 20-007621
Agency No.: ██████████
Petitioner: ██████████

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 January 25, 2021, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Rashawn Carter, Eligibility Specialist and Territa Jones-Rivers, Family Independence Manager.

ISSUE

Did the Department properly deny Petitioner's Food Assistance Program (FAP) application?

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 ██████████, 2020, Petitioner submitted an application for FAP benefits (Exhibit A, pp. 6-11).
2. Petitioner's household consisted of herself and her son.
3. Petitioner had unearned income in the form of child support.
4. Petitioner had unearned income in the form of Unemployment Compensation Benefits (UCB) in the weekly gross amount of \$287.
5. Petitioner had earned income from employment (Exhibit A, pp. 15-19).

6. On November 20, 2020, the Department sent Petitioner a Notice of Case Action informing Petitioner that her FAP application was denied (Exhibit A, pp. 28-31)
7. On November 20, 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 sent Petitioner a Notice of Case action on November 20, 2020, stating her FAP application was denied due to her exceeding the net income limit. A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. BEM 550 (January 2017), p.1 As Petitioner's son receives SSI, her group is designated as a categorically eligible SDV FAP group. Net income limitations are based on group size and are set forth in RFT 250. The Department presented a net income budget to establish Petitioner's group exceeded the net income limit (Exhibit A, pp. 23-25).

All countable earned and unearned income 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), pp. 1-2. 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. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. BEM 505, pp. 7-9. Income received weekly is multiplied by a 4.3 multiplier. BEM 505, pp. 7-9. Income received twice per month is added together. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit

funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (January 2020), pp. 6-7.

The Department testified that on the application, as well as at the interview, Petitioner reported that she did not have any income. However, the Department retrieved a Work Number report from [REDACTED] showing that Petitioner received a paycheck on November 13, 2020, in the gross amount of \$[REDACTED]. The Department multiplied the figure by the 2.15 multiplier and included a standard monthly earned income amount of \$[REDACTED] in Petitioner's FAP budget.

At the hearing, Petitioner testified that she only received one paycheck from [REDACTED]. Petitioner stated that she only worked with the employer from October 26, 2020 through November 2, 2020. Petitioner testified that she did not report the income to the Department because her entire paycheck was garnished by the employer for benefit arrears (Exhibit 1, p. 4). Petitioner stated that the Department did not ask her any questions regarding her income at [REDACTED].

The Department testified that Petitioner was not asked to verify her income or loss of employment at [REDACTED]. The Department stated that Petitioner did not report the income on her application or at the interview. The Department testified that Petitioner was also untruthful about her previous income with the [REDACTED] and that Petitioner requested that the Department cease any further contact. As a result, the Department utilized the Work Number to verify Petitioner's income from employment.

The Department must verify income at application and at redetermination. BEM 505 (October 2017), p. 14. The Department must obtain verification when required by policy or when information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. BAM 130 (April 2017), p. 1. When determining income, the Department uses income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505, p. 6. The Department must verify income that stopped within the 30 days prior to the application date or while the application is pending. BEM 505, p. 14. To verify wages, salaries and commissions for all programs, the Department will send a DHS-38, Verification of Employment. BEM 501 (October 2018), p. 11.

Although the Department was reasonable in its concern of Petitioner's failure to report her recent income in the [REDACTED], 2020 application, the Department should have sent Petitioner a request for verification before including the income in Petitioner's FAP budget. The income shown on the Work Number conflicts with Petitioner's statement on the application. Therefore, the Department did not properly follow policy when it failed to request verification of Petitioner's income, and when it included the income in the FAP budget without verification. Thus, the Department failed to properly follow policy when it denied Petitioner's FAP application.

DECISION AND ORDER

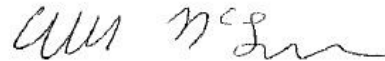
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it denied Petitioner's FAP application.

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 application;
2. If Petitioner is eligible for 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 Elizabeth Hertel, 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-76-Hearings
BSC4-HearingDecsions
M. Holden
D. Sweeney
MOAHR

Petitioner – Via First-Class Mail:

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