



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]

Date Mailed: March 12, 2021
MOAHR Docket No.: 21-000166
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 March 8, 2021, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearing Facilitator.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefit case?

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. In December 2020, Petitioner completed a redetermination related to her FAP benefit case.
3. Petitioner's household consisted of Petitioner, Petitioner's mother and Petitioner's three foster children.
4. Petitioner had unearned income in the form of child foster care payments in the amount of \$241.36 per child, paid on a biweekly basis (Exhibit A, pp. 11-13).

5. Petitioner had unearned income in the form of Supplemental Security Income (SSI) in the gross amount of \$794 (Exhibit A, pp. 6-7). Petitioner's SSI income was reduced by a recoupment amount of \$79.40 per month. Petitioner also received State SSI Payment (SSP) benefits in the amount of \$42 per quarter.
6. Petitioner's mother had unearned income in the form of Retirement, Survivors and Disability Insurance (RSDI) in the gross amount of \$754 per month (Exhibit A, pp. 8-10). Petitioner's mother also had unearned income in the form of SSI in the gross amount of \$60 per month. Petitioner's mother also received SSP benefits in the gross amount of \$42 per quarter.
7. On March 3, 2021, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefit case was closing effective January 1, 2021, for exceeding the net income limit for her group size (Exhibit A, pp. 16-20).
8. 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 was an ongoing FAP recipient. In December 2020, Petitioner completed a redetermination related to her FAP benefit case. The Department determined Petitioner exceeded the net income limit for her group size. A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. BEM 550 (January 2017), p.1. 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. 14-15).

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. 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.

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. For RSDI, the Department counts the gross benefit amount as unearned income. BEM 503 (January 2020), p. 28. For FAP benefit cases, the Department includes the gross amount of current Social Security Administration (SSA)-issued SSI as unearned income. BEM 503 (January 2020), p. 34. SSI amounts withheld to recoup overpayments due to an Intentional Program Violation (IPV) are also included in the gross amount. BEM 503, p. 33. Amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. BEM 500 (July 2017), p. 6. These amounts are excluded as income. BEM 550, p. 6. Whenever an SSA-issued independent living or household of another payment is budgeted, the Department will include the monthly SSP payment amount as unearned income. BEM 503, p. 35.

Per the budget provided, the Department included \$3,110 in unearned income in Petitioner's FAP budget. The Department presented Petitioner's and Petitioner's mother's State Online Query (SOLQ) reports showing their Social Security income. Petitioner receives SSI benefits in the gross amount of \$794. Petitioner's SSI benefits are reduced by a recoupment amount of \$79.40. The Department testified that it included Petitioner's reduced benefit amount of \$728 per month. Petitioner conceded at the hearing that she also receives SSP benefits in the amount of \$42 per quarter, which averages to \$14 per month. Per the SOLQ, Petitioner's mother receives \$754 per month in gross RSDI benefits and \$60 per month in gross SSI benefits. Petitioner also agreed that her mother receives SSP benefits in the gross amount of \$42 per quarter, which averages to \$14 per month. Petitioner's and Petitioner's mother's countable unearned income is \$1,556 per month.

For FAP benefits, the Department counts these payments as the unearned income of the foster child who has a FAP program request status of yes. BEM 503, p. 5. A foster parent may choose whether or not to request FAP on behalf of a foster child. BEM 503, p. 5. When FAP program request status for foster child is no, Bridges does not consider the child's needs or income in the FAP eligibility determination. BEM 503, p. 5. The Department will contact the children's service worker for the amount paid. BEM 503, p. 5.

The Department testified that Petitioner's foster children have always been included in Petitioner's FAP benefit group and there was no indication that Petitioner elected to have them removed from her group. The Department presented a letter from the children's service worker showing that Petitioner receives \$241.36 per child, paid on a biweekly basis. The biweekly benefit amount multiplied by the 2.15 multiplier equals

\$518.92 per month. The \$518 figure multiplied by three (as there are three children) is \$1,554 per month. The foster care payments combined with Petitioner's and Petitioner's mother's countable unearned income results in a total countable household income of \$3,110 per month. Therefore, the Department properly calculated Petitioner's household income.

The deductions to income on the net income budget were also reviewed. There was evidence presented that the Petitioner's group includes a senior/disabled/veteran (SDV). BEM 550. Thus, the group is eligible for the following deductions to income:

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

BEM 554 (January 2020), p. 1; BEM 556 (January 2020), p. 3.

Petitioner's FAP benefit group size of five justifies a standard deduction of \$212. RFT 255 (January 2020), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care, child support expenses or out-of-pocket medical expenses. Therefore, the budget properly excluded any deduction for dependent care, child support or medical expenses.

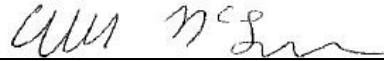
In calculating the excess shelter deduction of \$0, the Department stated that it considered Petitioner's verified housing expense of \$639 and that she was entitled to the heat/utility standard of \$537. BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount, they added the total shelter amount and subtracted 50% of the adjusted gross income, which resulted in a deficit. Therefore, the Department correctly determined Petitioner was not entitled to an excess shelter deduction.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$2,898. As Petitioner was not entitled to an excess shelter deduction, her net income is also \$2,898. The net income limit for a group of five is \$2,557. RFT 250 (October 2017), p. 1. Therefore, the Department acted in accordance with policy when it closed Petitioner's FAP benefit case for exceeding the net income limits.

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 acted in accordance with Department policy when it closed Petitioner's FAP benefit case. Accordingly, the Department's decision is **AFFIRMED**.

EM/tm



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-19-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

██████████
████████████████████
████████████████████