



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: March 17, 2021  
MOAHR Docket No.: 21-000230  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

### **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 10, 2021, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Candice Benns, Hearing Facilitator.

### **ISSUE**

Did the Department properly close Petitioner's Food Assistance Program (FAP) 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 recipient of FAP benefits. Petitioner's FAP household consists of herself and one minor child. Petitioner's household does not contain a Senior/Disabled/Disabled Veteran (SDV) member.
2. In connection with a Semi-Annual, Petitioner's eligibility for FAP benefits was reviewed. Petitioner informed the Department that she was employed with Quality Temporary Services.
3. On January 15, 2021, the Department sent Petitioner a Notice of Case Action advising her that effective February 1, 2021, her FAP case would be closed because her household's gross income exceeded the limit. (Exhibit A, pp. 7-8)
4. On or around January 19, 2021, Petitioner requested a hearing disputing the Department's actions with respect to her FAP case. (Exhibit A, pp. 4-5)

## **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 requested a hearing disputing the closure of her FAP case effective February 1, 2021. At the hearing, the Department testified that in processing Petitioner's Semi-Annual review and updating the employment income information for Petitioner's FAP case, it determined that Petitioner's household had income in excess of the \$1,868 gross income limit based on her two-person household group size.

In order to be eligible for FAP benefits, FAP groups must have income below the applicable gross and/or net income limits based on their group size. BEM 550 (October 2020); BEM 213 (October 2020); BEM 212 (October 2020); RFT 250 (October 2020). The Department determined that Petitioner was subject to the gross income test because her household did not include an SDV member. Thus, the Department applied a gross income limit for a two-person group size of \$1,868. RFT 250, p. 1.

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 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 (January 2021), 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 converted to a standard monthly amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. 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 2021), pp. 6-7.

The Department presented a FAP Gross Income Test Budget which showed that it calculated Petitioner's monthly earned income to be \$3,519. (Exhibit A, p. 15). The Department testified that it considered Petitioner's weekly earnings from employment in the 30 days prior to the processing of the Semi-Annual. Although a Work Number and additional paystubs were included with the Department's hearing packet/Exhibit A, the pay amounts and pay dates reflected on the documents were illegible. The Department could not explain or otherwise identify the pay dates and pay amounts considered. Petitioner confirmed that she was employed and that her hourly rate of pay was \$16.50; however, Petitioner indicated her weekly hours fluctuate. It was unclear based on the evidence presented by the Department whether the correct income amounts were considered in the calculation of Petitioner's monthly gross income. Therefore, the Department failed to establish that it properly calculated Petitioner's earned income.

After further review and based on the above discussion, the Department failed to establish that it acted in accordance with Department policy when it closed Petitioner's FAP case effective February 1, 2021 because her household's gross income exceeded the limit for her two-person group size.


### **DECISION AND ORDER**

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 Petitioner's FAP case effective February 1, 2021;
2. Recalculate Petitioner's FAP budget for February 1, 2021, ongoing;
3. If Petitioner is determined eligible, issue FAP supplements to Petitioner from February 1, 2021, ongoing, for any FAP benefits she was eligible to receive but did not, in accordance with Department policy; and
4. Notify Petitioner in writing of its decision.

ZB/jem

  
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**Zainab A. Baydoun**  
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-41-Hearings  
BSC4-HearingDecsions  
M. Holden  
D. Sweeney  
MOAHR

**Petitioner – Via First-Class Mail:**

[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]