



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: July 2, 2021  
MOAHR Docket No.: 21-002728  
Agency No.: ██████████  
Petitioner: ██████████

**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 June 30, 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 due to excess net income?

### **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.
2. Petitioner's FAP household consists of five members and includes a Senior/Disabled/Disabled Veteran (SDV) member.
3. On May 14, 2021, the Department sent Petitioner a Notice of Case Action advising her that effective June 1, 2021, her FAP case would be closed because her household's net income exceeded the limit. (Exhibit A, pp. 15-20)
4. On or around May 24, 2021, Petitioner requested a hearing disputing the Department's actions with respect to her FAP case. (Exhibit A, p. 3)

## **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 June 1, 2021. At the hearing, the Department testified that it determined that Petitioner's household had income in excess of the \$2,557 net income limit based on her five-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. Petitioner is subject to the net income test, as her household includes an SDV member. BEM 550 (October 2020); BEM 213 (October 2020); BEM 212 (October 2020); RFT 250 (October 2020). The Department properly applied a net income limit for a five-person group size of \$2,557. RFT 250, p. 1.

The Department presented a FAP EDG Net Income Results Budget for June 2021 which was thoroughly reviewed to determine if the Department properly concluded that Petitioner's household had excess income. (Exhibit A, pp. 9-10).

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. 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 considers the gross amount of money earned from Retirement Survivors Disability Insurance (RSDI) or Social Security and Supplemental Security Income (SSI) in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (April 2021), pp. 29-37. For an individual who lives in an independent living situation, State SSI Payments (SSP) are issued quarterly in the amount of \$42; and the payments are issued in the final month of each quarter; see BEM 660. The Department will count the monthly SSP benefit amount (\$14) as unearned income. BEM 503, pp. 35-37; BEM 660 (October 2020), pp. 1-2; RFT 248 (January 2021), p. 1.

The budget shows that the Department concluded Petitioner's household had gross earned income in the amount of \$[REDACTED]. While the Department representative testified that it considered Petitioner's employment earnings for the 30 days prior to the budget month, the Department could not identify the exact pay amounts and pay dates. It was unclear which income amounts were relied upon in calculating Petitioner's gross earned income of [REDACTED]. Petitioner testified that she was informed by her case worker that an extra check from the month of May 2021 was included in the income calculation. Petitioner testified that the extra check included vacation pay that was unusual and asserted that it should not be countable. Because it was unclear which income amounts were considered by the Department and the Department could not explain how the \$[REDACTED] was calculated, the Department failed to establish that it properly concluded Petitioner's household had earned income of \$[REDACTED].

With respect to unearned income, the Department testified that it considered \$[REDACTED] in SSI for one household member and \$[REDACTED] in SSI for a second household member. However, this amount does not total the unearned income reflected on the budget of \$[REDACTED] and no documentary evidence was presented by the Department in support. Additionally, Petitioner disputed the Department's unearned income calculation and testified that while her daughter receives SSI of \$[REDACTED] monthly, her fiancé only receives \$[REDACTED] and not the \$[REDACTED] relied upon by the Department. Because there was no evidence to support the Department's calculation, the Department failed to establish that it properly concluded Petitioner's household had unearned income of \$[REDACTED].

The deductions to income on the net income budgets were also reviewed. Petitioner's FAP group includes a senior/disabled/veteran (SDV) member. BEM 550 (October 2020), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (April 2021), p. 1; BEM 556 (February 2021), p. 1-8.

In this case, because the Department failed to establish that the earned income was properly calculated, it follows that the earned income deduction is also incorrect. There was no evidence presented that Petitioner had any out-of-pocket dependent care, medical expenses, or child support expenses; therefore, the budget properly did not include any deduction for dependent care, medical expenses, or child support. The Department properly applied a standard deduction of \$212 which was based on Petitioner's confirmed group size of five. RFT 255 (January 2021), p. 1.

With respect to the excess shelter deduction, the budget summary included with the May 14, 2021 Notice of Case Action shows that the Department considered \$575 in monthly rent which Petitioner confirmed was correct and the \$537 heat and utility (h/u) standard, which covers all heat and utility costs including cooling expenses was properly considered. FAP groups that qualify for the h/u standard do not receive any other individual utility standards.

After further review and based on the above discussion, because of the errors in the calculation of Petitioner's earned and unearned income, the Department failed to establish that it acted in accordance with Department policy when it closed Petitioner's FAP case effective June 1, 2021 because her household's net income exceeded the limit for her five-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 June 1, 2021;
2. Recalculate Petitioner's FAP budget for June 1, 2021, ongoing;
3. If Petitioner is determined eligible, issue FAP supplements to Petitioner from June 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/jm

  
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**Zainab A. Baydoun**  
Administrative Law Judge

**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-HearingDecisions  
M. Holden  
D. Sweeney  
MOAHR

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

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