



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

██████████
██████████
██████████, MI ██████████

Date Mailed: September 13, 2021
MOAHR Docket No.: 21-003668
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 telephonic hearing was held on September 1, 2021. The Petitioner, ██████████, appeared and represented herself. The Michigan Department of Health and Human Services (MDHHS or the Department) was represented by Eligibility Specialist, Tonya Davis, and Hearings Facilitator, Corlette Brown.

ISSUE

Did the Department properly reduce Petitioner's Food Assistance Program (FAP) benefits?

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 ██████████, 2021, Petitioner applied for FAP benefits for herself and her three children (Exhibit A, pp. 11-17). The application was approved, and the household began receiving FAP benefits.
2. On May 3, 2021, MDHHS sent Petitioner a Semi-Annual Contact Report, which instructed Petitioner that she was required to complete a six-month review (Exhibit A, pp. 18-20).

3. On June 29, 2021, Petitioner completed the Semi-Annual Contact Report and submitted it to the Department. On the Report, she indicated that her monthly income from self-employment was [REDACTED] and that the household's monthly income had not changed by more than [REDACTED] (Exhibit A, p. 19).
4. On June 30, MDHHS interviewed Petitioner as part of the semi-annual review. During that interview, Petitioner indicated that she had been receiving unemployment insurance. Petitioner submitted documentation showing that she had been receiving Pandemic Unemployment Assistance (PUA) through June 9, 2021 that was not previously budgeted (Exhibit A, pp. 31-32). The Department processed the review and included the PUA payments in the household budget as unearned income, which led to a reduction in benefits.
5. At the hearing, Petitioner indicated that she had not received PUA since June 9, 2021 due to an ID verification issue. She also stated that she had not informed the Department that the PUA payments had stopped.
6. On July 14, 2021, MDHHS sent Petitioner a Notice of Case Action indicating that her household of four had been approved for \$[REDACTED] per month in FAP benefits beginning on July 1, 2021 through December 31, 2021 (Exhibit A, pp. 4-8). The benefit amount was based on [REDACTED] in self-employment income, \$710.00 in unearned income, a \$[REDACTED] Standard Deduction and a [REDACTED] Heat/Utility Standard Deduction (Exhibit A, p. 5).
7. On [REDACTED] 2021, the Department received Petitioner's verbal request for hearing disputing the reduction in her FAP benefits.

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 disputed the Department's reduction of her FAP benefit rate. To determine whether the Department properly calculated Petitioner's FAP benefits, the evaluation first starts with consideration of all countable earned and unearned income available to the client. 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), p. 1. 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. 6-8. A standard monthly amount must be determined for each income source used in the budget, which is determined by multiplying average biweekly pay by 2.15 and average weekly pay by 4.3. BEM 505, pp. 8-9.

Here, the reduction in Petitioner's FAP benefits was due to MDHHS including the monthly PUA amount as unearned income in Petitioner's FAP budget. PUA is a program created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which provides additional unemployment assistance for individuals who are not typically covered by unemployment benefits, such as workers with insufficient work history or those looking for part-time work. ESA 2020-24 (April 2020).¹ PUA is a form of countable unearned income for FAP. ESA 2020-24.

The Department budgeted ██████ per month in PUA for Petitioner's unearned income. However, it is unclear from the record how this number was determined. This amount is inconsistent with the PUA document Petitioner provided (Exhibit A, pp. 31-32). Additionally, Petitioner did not include this amount on the Semi-Annual Contact Report (Exhibit A, pp. 18-20), nor was it reflected on the Consolidated Income Inquiry (Exhibit A, p. 28). Even if this amount was disclosed during the interview on June 30, 2021, the Department is required to verify all income, including unemployment income, at redetermination. BEM 503 (April 2021, p. 45).

Accordingly, 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 MDHHS failed to show that it acted in accordance with Department policy when recalculating Petitioner's FAP budget, because it did not properly verify Petitioner's unemployment income.

¹ Eligibility for PUA benefits was extended pursuant to the Consolidated Appropriations Act and the American Rescue Plan.

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. Recalculate the FAP budget for July 1, 2021 ongoing in accordance with Department policy and consistent with this Hearing Decision;
2. If Petitioner is eligible for supplements, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from July 1, 2021 ongoing; and
3. Notify Petitioner of its decision in writing.



LJ/tm

Linda Jordan
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-31-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

██████████
████████████████████
██████ MI ██████