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GOVERNOR

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

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DIRECTOR

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██████████, MI ██████████

Date Mailed: May 9, 2022
MOAHR Docket No.: 22-001532
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, hearing was held on May 4, 2022 via teleconference. Petitioner appeared and represented herself. Markita Mobley, Assistance Payments Supervisor, represented the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly determine Petitioner's FAP benefit rate?

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. On January 3, 2022, Petitioner or someone who had access to Petitioner's online account submitted a Change Report, which indicated that ██████████ (Son) was residing in her household (Exhibit A, pp. 6-7). The Change Report also indicated that ██████████ had not resided in the household since May 1, 2020 (Exhibit A, p. 6).
3. On January 5, 2022, MDHHS sent Respondent a Notice of Case Action indicating that her FAP benefit rate had decreased to \$██████████ per month, effective February 1, 2022 (Exhibit A, p. 7). The FAP group included Respondent and Son (Exhibit A, p. 7). The FAP benefit rate was based on \$██████████ in unearned income (Exhibit A, p. 8).

4. On ██████ 2022, Petitioner filed a Request for a Hearing disputing the decrease in her FAP benefit rate (Exhibit A, pp. 4-6).

CONCLUSIONS OF LAW

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. MDHHS 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, MDHHS decreased Respondent's FAP benefit rate after adding Son as a household member and including his unearned income in the FAP benefit calculation. On ██████, 2022, Respondent submitted a Request for a Hearing to dispute the decrease in the FAP benefit rate. After Respondent submitted her hearing request, MDHHS removed Son from the group and approved her for FAP benefits for a group of one, excluding Son's income (Exhibit A, pp. 9-10). Petitioner disputed this action as well. This decision will address the issues of FAP group composition and the calculation of the FAP benefit rate.

FAP Group Composition

For MDHHS to determine a client's FAP benefit rate, it must first determine the FAP group composition. To determine FAP group composition, MDHHS considers (i) who lives together; (ii) the relationships of the people who live together; (iii) whether the people living together prepare food together; and (iv) whether the person resides in a special living situation which requires the consideration of other factors. BEM 212 (January 2022), p. 1. Living together means sharing a home where family members usually sleep and share any common living quarters, excluding access areas such as an entrance or hallway or a laundry area. *Id.*, p. 3. People who purchase and prepare food together share food in common, which can be evidenced by contributing to the purchase of food; sharing in the preparation of food, regardless of who paid for it; and/or eating from the same food supply, regardless of who paid for it. *Id.*, pp. 5-6.

MDHHS must also determine mandatory and non-mandatory group members based on the relationship of the people who live together. BEM 212, p. 1. If they are mandatory group members, they must be included in the same FAP group. *Id.* If they are non-mandatory group members, then MDHHS must determine the factors listed above. *Id.* Parents and their children under age 22 who live together must be in the same group regardless of whether the children have their own spouse or a child who lives in the group. *Id.*

At the hearing, Petitioner testified that she lived with Son, who is an adult over the age of 22 with disabilities, and that they purchase and prepare food together. Petitioner disputed submitting the Change Report and asserted that someone from MDHHS must have entered it. MDHHS pointed out that it was a report that it received from Petitioner's MI Bridges online account and thus, Petitioner, or someone with access to Petitioner's online portal must have submitted it. In addition, MDHHS testified that it communicated

with Petitioner by telephone on April 4, 2022 and concluded that Son should not be included in Petitioner's FAP group because they do not purchase and prepare food together. This conclusion prompted MDHHS to remove Son from the group and approve Petitioner for FAP benefits for a household-size of one, effective May 1, 2022 (Exhibit A, p. 9).

Although Petitioner and Son are not mandatory group members due to Son's age, Son should be included on Petitioner's FAP group because they share common living quarters, and they purchase and prepare food together. This conclusion is based on Petitioner's testimony at the hearing. Thus, the action of adding Son to Petitioner's FAP group on January 5, 2022 was proper. It is not clear why MDHHS subsequently removed Son from Petitioner's FAP group on April 4, 2022 because according to Petitioner's testimony, there had been no changes in her household living arrangement. The record shows that Petitioner had a FAP group-size of two from at least January 5, 2022 ongoing.

FAP Benefit Rate

On January 5, 2022, MDHHS determined that Petitioner had a FAP group-size of two, including Son and was eligible for \$[REDACTED] per month in FAP benefits (Exhibit A, p. 7). Petitioner disputed this amount, which was a decrease from her former FAP benefit rate.

However, due to the COVID-19 pandemic, the federal government authorized the State of Michigan to issue Emergency Allotments (EA) to all FAP households, meaning that FAP households not receiving the maximum benefit for their group size will receive a supplement to bring their benefit amount to the maximum amount allowed for their group size. ESA Memo 2022-22 (January 2022). If the supplement does not equal or exceed \$95.00, the group will receive additional benefits up to \$95.00, even if this causes them to exceed the maximum benefit amount for the group size. *Id.* While the EA are in effect, Petitioner's FAP benefit amount is the maximum for a household size of one, which was \$[REDACTED] per month as of October 1, 2021. *Id.*; RFT 260 (October 2021), p. 1. When the EA are no longer in effect, Petitioner will receive her regular ongoing benefit amount based on household income and expenses and applicable deductions.

To determine whether MDHHS properly calculated Petitioner's FAP benefit amount, the evaluation starts with a consideration of all countable earned and unearned income available to the FAP group. BEM 500 (July 2020), pp. 1-5. MDHHS 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. Each source of income is converted to a standard monthly amount. *Id.*

MDHHS budgeted \$[REDACTED] in unearned income for the group, which it testified was based on Petitioner's and Son's Supplemental Security Income (SSI) payments and State SSI Payments (SSP). SSI is a benefit administered by the Social Security Administration (SSA). BEM 503, p. 35. In Michigan, SSI benefits include a basic federal benefit and an additional amount paid with state funds, known as SSP. BEM 660

(October 2021), p. 1. MDHHS counts gross income of current SSA-issued SSI as unearned income. *Id.*

MDHHS testified that it calculated \$[REDACTED] in unearned income for the household based on Petitioner's monthly SSI payment of \$[REDACTED] and Son's monthly SSI payment of \$[REDACTED]. MDHHS also budgeted \$[REDACTED] per month for Petitioner and Son's SSP, which brought the total amount of unearned income to \$[REDACTED]. Petitioner disputed the amount that MDHHS budgeted for Son's SSI payment, indicating that he received less than \$[REDACTED] due to an SSI overpayment. MDHHS testified that based on its records, Son receives \$[REDACTED] per month in SSI after funds are withheld due to an overpayment. Generally, benefits reduced due to an overpayment are not part of gross income and are excluded, unless the overpayment was due to an intentional program violation (IPV). *Id.*; BEM 500 (July 2020), pp. 6-7. IPV means that there was a finding of fraud or an agreement to repay benefits in lieu of prosecution. *Id.*

In this case, there was no evidence that Son's SSI overpayment withholding was due to an IPV. Therefore, MDHHS failed to establish that it properly budgeted Son's income when determining the FAP group's benefit rate. 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 satisfy its burden of showing that it acted in accordance with Department policy when it decreased Petitioner's FAP benefit rate.

DECISION AND ORDER

Accordingly, MDHHS' decision is **REVERSED**.

MDHHS 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 February 1, 2022 ongoing;
2. If Petitioner is eligible, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from February 1, 2022 ongoing;
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

Email Recipients:

MDHHS-Wayne-57-Hearings
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