



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: May 16, 2023
MOAHR Docket No.: 23-001608
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 hearing was held on May 10, 2023 via teleconference. Petitioner appeared and represented himself. Valarie Foley, Hearings Facilitator, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly terminate 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. Petitioner was an ongoing recipient of FAP benefits for a household of four, including himself, Hala Hazimi (Wife), Youssef Hazimi (Son) and his daughter (Exhibit A, p. 27).
2. On March 15, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that his FAP case would be closed, effective April 1, 2023 ongoing, because the household exceeded the monthly income limit for the program (Exhibit A, p. 4). The notice informed Petitioner that the monthly income limit for a household of three was \$1,920.00 per month and that MDHHS calculated Petitioner's household net income as \$2,595.00 per month (Exhibit A, p. 4). The notice also indicated that Son was excluded from the group as an ineligible student (Exhibit A, p. 5).

3. On March 22, 2023, Petitioner requested a hearing to dispute the closure of his FAP benefits (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. 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 closed Petitioner's FAP case for exceeding the income limit for the program. Petitioner disputed MDHHS' budget calculation. To determine whether MDHHS properly calculated Petitioner's FAP benefit amount, all countable earned and unearned income available to the client must be considered. BEM 500 (April 2022), 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 (October 2022), p. 1. MDHHS is required to prospect income using the best estimate of income expected to be received during the month and should seek input from the client to establish the estimate, whenever possible. BEM 505, p. 3. For stable and fluctuating income that is received more often than monthly, MDHHS converts the income into a standard amount by multiplying weekly income by 4.3, multiplying biweekly income by 2.15 and adding together amounts received twice a month. *Id.*, p. 8-9. For irregular income, MDHHS determines a standard amount by adding the amounts entered together and dividing by the number of months used. *Id.* MDHHS is also required to use income for the past 60 or 90 days for fluctuating or irregular income if the past 30 days is not a good indicator of future income and the past 60 or 90 days is a good indicator of what the client is expected to receive in the benefit month. *Id.*, p. 6.

MDHHS must obtain verification when it is required by policy or information is unclear or incomplete. BAM 130 (January 2022), p. 1. Verification is usually required at application/redetermination and when a reported change affects eligibility or benefit level. *Id.* To obtain verification, MDHHS must tell the client what verification is required, how to obtain it and the due date. *Id.*, p. 3. The client must obtain the requested verification, but the local office must assist the client if they need and request help. *Id.*, p. 3. If neither the client nor the local office can obtain verification despite a reasonable effort, MDHHS must use the best available information. *Id.* If no information is available, MDHHS must use its best judgement. *Id.* MDHHS allows the client ten calendar days to provide the requested verification. *Id.*, p. 7. Verifications are considered timely if

received by the date that they are due. *Id.* MDHHS sends a negative action notice when the client indicates a refusal to provide the requested verification, or the time period given on the VCL has lapsed and the client has not made a reasonable effort to provide it. *Id.* Before making a final determination regarding eligibility, MDHHS must give clients a reasonable opportunity to resolve any discrepancies between their statements and information from another source. *Id.*, p. 9.

Here, MDHHS determined that Petitioner's gross monthly earned income was \$[REDACTED] based on Petitioner's income and Wife's income. Petitioner disputed the amount that MDHHS budgeted for Wife's income, testifying that it varied month-to-month depending on the employer's needs. MDHHS introduced a Work Number Report which verified Petitioner's testimony and demonstrated that Wife received fluctuating income, which was paid on a bi-weekly basis (Exhibit A, pp. 16-18). For example, for the pay period ending February 28, 2023, Wife received \$[REDACTED] in gross earnings (Exhibit A, p. 17). However, for the pay period ending January 15, 2023, Wife received \$[REDACTED] in gross earnings (Exhibit A, p. 17). Despite this evidence, MDHHS testified that it calculated Wife's monthly income based on the last 30 days of earnings. This was improper because the record shows substantial variation in Wife's pay and using 60 or 90 days of Wife's earnings would have led to a more accurate estimation of her future income. Petitioner did not dispute the calculation of his income.

Additionally, Petitioner testified that he reported to MDHHS that he paid taxes and insurance for his home. MDHHS did not budget any housing expenses for Petitioner's household (Exhibit A, p. 10). There was no evidence that Petitioner's household was a Senior/Disabled/Disabled Veteran (SDV) household. BEM 550 (January 2022), p. 1. Therefore, Petitioner was eligible for deductions based on dependent care expenses, excess shelter up to the maximum in Reference Tables (RFT) 255, and court-ordered child support and arrearages paid to non-household members. BEM 554 (October 2022), p. 1. For housing expenses, MDHHS includes ongoing payments made for rent, mortgage, second mortgage, home equity loan, required condominium maintenance fees, lot rental or other payment including interest leading to ownership of the shelter occupied by the FAP group. *Id.*, p. 14. Property taxes, state and local assessments and insurance on the structure are allowable expenses. *Id.*, p. 15. There was no evidence of dependent care expenses or court-ordered child support, however, Petitioner credibly testified that he reported to MDHHS that he paid property taxes and insurance for the home occupied by the FAP group. MDHHS did not present any evidence that show that it considered or attempted to verify these expenses, contrary to BAM 130.

Finally, MDHHS determined that Son was an ineligible student because he was attending college full time and not working. For the purposes of FAP, beneficiaries are in student status if they are age 18 through 49 and enrolled half-time or more in a regular curriculum at a college or university that offers degree programs. BEM 245 (April 2021), pp. 3-4. In order for beneficiaries in student status to be eligible for FAP, they must meet one of the criteria contained in BEM 245, pp. 4-6. The criteria address a variety of situations, including education related to work-study and training programs. Additionally, the Consolidated Appropriations Act of 2021, temporarily expanded student

eligibility under state or federally funded work study programs for individuals who are deemed as eligible to participate in work study, as determined by the institution of higher learning, but may not be actively participating in work study hours. *Id.*, p. 6. This exemption is effective until 30 days after the COVID-19 public health emergency is lifted.¹ *Id.* At the hearing, Petitioner could not provide details regarding Son's program of study or his financial aid status. No evidence was introduced to show that MDHHS attempted to verify this information by sending Petitioner a VCL, contrary to policy.

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 did not act in accordance with Department policy when it terminated Petitioner's FAP benefits.

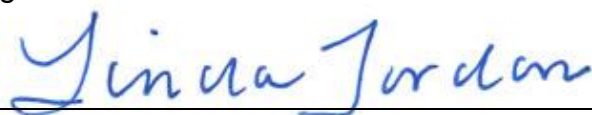
DECISION AND ORDER

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. Reinstate Petitioner's FAP case, effective April 1, 2023 ongoing;
2. Redetermine Petitioner's household size after requesting additional information about Son's student status as necessary, effective April 1, 2023 ongoing;
3. Redetermine Petitioner's FAP budget after considering Wife's fluctuating income and Petitioner's housing expenses, requesting additional information as necessary, from April 1, 2023 ongoing;
4. Issue supplements to Petitioner for any FAP benefits that he was eligible to receive but did not, from April 1, 2023 ongoing; and
5. Notify Petitioner of its decision in writing.

LJ/tm



Linda Jordan
Administrative Law Judge

¹ As of the hearing date, the U.S. Department of Health and Human Services was planning for the federal Public Health Emergency (PHE) for COVID-19, declared under Section 319 of the Public Health Service (PHS) Act, to expire at the end of the day on May 11, 2023. U.S. Dep't of Health & Human Services, Fact Sheet: End of the COVID-19 Public Health Emergency <<https://www.hhs.gov/about/news/2023/05/09/fact-sheet-end-of-the-covid-19-public-health-emergency.html>> (last accessed May 16, 2023).

