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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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Date Mailed: May 31, 2023
MOAHR Docket No.: 23-002471
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 May 25, 2023, via conference line. Petitioner was present and was unrepresented. The Department of Health and Human Services (Department) was represented by Marissa Miholer, Eligibility Specialist and Katherine Bowman, Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefit 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 FAP recipient.
2. On April 1, 2023, Petitioner submitted an application for other program benefits (Exhibit A, pp. 4-12). As a result, Petitioner's income information was updated related to her FAP benefit case.
3. Petitioner's household consisted of herself and her three children.
4. Petitioner had unearned income in the form of Supplemental Security Income (SSI) benefits in the gross amount of \$914 per month (Exhibit A, pp. 21-23). Petitioner also received State SSI Payment (SSP) benefits in gross amount of \$14 per month.

5. Petitioner's son had unearned income in the form of SSI benefits in the gross monthly amount of \$896.10 (Exhibit A, pp. 18-20). Petitioner's son also received gross monthly SSP benefits in the amount of \$14 per month.
6. Petitioner's second adult son had unearned income in the form of Unemployment Compensation Benefit (UCB) income in the gross amount of \$362 per week, paid on a biweekly basis (Exhibit A, pp.14-15).
7. On April 5, 2023, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefit case was being closed effective May 1, 2023, ongoing, due to her exceeding the net income limit (Exhibit, pp. 24-29).
8. On April 17, 2023, Petitioner requested a hearing disputing the Department's actions.

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, the Department sent Petitioner a Notice of Case action on April 5, 2023, stating her FAP benefits were being closed due to her exceeding the net income limit. A Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. BEM 550 (January 2017), p.1 As Petitioner and her son received SSI, her group was designated as an SDA group. Net income limitations are based on group size and are set forth in RFT 250. The Department presented a net income budget summary to establish Petitioner's group exceeded the net income limit (Exhibit A, p. 26).

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 2017), 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 (October 2017), 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 multiplied by a 4.3 multiplier. BEM 505, pp. 7-9. Income received twice per month is added together. BEM 505, pp. 7-9. For FAP benefit cases, the Department includes the gross amount of current Social Security Administration (SSA)-issued SSI as unearned income. BEM 503 (January 2020), p. 34. Whenever an SSA-issued independent living or household of another payment is budgeted, the Department will include the monthly SSP payment amount as unearned income. BEM 503, p. 35.

Per the budget provided, the only income included in Petitioner's FAP budget was \$3,394 in unearned income. The Department Presented Petitioner's State Online Query (SOLQ) showing Petitioner receives \$914 per month in gross SSI benefits. The Department also provided Petitioner's son's SOLQ showing he receives \$896.10 in gross SSI benefits per month. Petitioner and her son also each receive SSP benefits in the gross amount of \$14. Petitioner's second son receives \$362 per week in gross UCB income, paid on a biweekly basis. Petitioner's son's biweekly payment of \$724 multiplied by the 2.15 multiplier results in a standard monthly amount of \$1,556.60. The SSI benefits combined with the UCB income results in a standard monthly income of \$3,394. Therefore, the Department properly determine Petitioner's household income.

At the hearing, Petitioner argued that her and her SSI should not be included, as she is part of the Plan to Achieve Self-Support (PASS) program. The Social Security Administration (SSA) allows an SSI recipient to divert income from sources other than SSI, to pay the expenses of an approved plan to achieve self-support (PASS). BEM 500, p. 10. SSA does not consider the PASS portion of the income in determining the amount of the individual's SSI benefit. BEM 500, p. 10. SSA monitors compliance with the plan. BEM 500, p. 10. The Department excludes portions of income being diverted to a PASS as income and as an asset for the FAP program. BEM 500, p. 10.

Per policy, members of the PASS program divert income *other than* SSI income. Petitioner conceded at the hearing that she did not have any income other than her SSI income. Petitioner did not provide any documentation to support her testimony. Therefore, the Department acted in accordance with policy when it determined Petitioner's unearned income.

The deductions to income on the net income budget were also reviewed. There was evidence presented that the Petitioner's group includes a SDV member. BEM 550. Thus, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical deduction.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (January 2017), p. 1; BEM 556 (July 2013), p. 3.

Petitioner's FAP benefit group size of three justifies a standard deduction of \$193. RFT 255 (January 2020), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care, child support expenses or out-of-pocket medical expenses. Therefore, the budget properly excluded any deduction for dependent care, child support or medical expenses.

In calculating the excess shelter deduction of \$0, the Department considered Petitioner's verified housing expense of \$390 and that she was entitled to the heat/utility standard of \$624. BEM 554, pp. 14-15. When calculating Petitioner's excess shelter amount, the total shelter amount is added together and subtracted by 50% of the adjusted gross income, which resulted in a deficit. Therefore, the Department correctly determined Petitioner was not entitled to an excess shelter deduction.

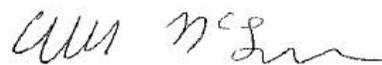
The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$3,201. As Petitioner was not entitled to an excess shelter deduction, her net income is also \$3,201. The net income limit for a group of three is \$1,920. RFT 250 (October 2022), p. 1. Therefore, the Department acted in accordance with policy when it closed Petitioner's FAP benefit case effective May 1, 2023, ongoing, for exceeding the net income limits.

Petitioner also argued that the Department erred when closing her FAP benefit case, as an interview was not completed prior to closure. Petitioner cited BAM 115 to support her argument. An interview is required before denying assistance even if it is clear from the application or other sources that the group is ineligible. BAM 115, p. 18. However, Petitioner was not an applicant, she was an ongoing recipient. Therefore, the policy cited by Petitioner is not applicable. Petitioner did not dispute the factors considered in her FAP budget. Therefore, the Department properly determined Petitioner's FAP eligibility.

DECISION AND ORDER

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 the Department acted in accordance with Department policy when it closed Petitioner's FAP benefit case. Accordingly, the Department's decision is **AFFIRMED**.

EM/tm



Ellen McLemore
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-Electronic Mail :

DHHS
Renee Olian
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427 E Alcott St
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Interested Parties
M. Holden
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Via-First Class Mail :

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