



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

Date Mailed: November 9, 2023
MOAHR Docket No.: 23-006423
Agency No.: [REDACTED]
Petitioner: [REDACTED]

[REDACTED]
[REDACTED]
MI [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

On September 27, 2023, Petitioner, [REDACTED] requested a hearing to dispute a Food Assistance Program (FAP) denial. Following Petitioner's hearing request, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 7 CFR 273.15, and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on November 7, 2023. Petitioner appeared and represented herself. Respondent, Department of Health and Human Services (Department), had Alyssa Monterusso, Assistance Payments Worker, and Verenie Davis, Assistance Payments Supervisor, appear as its representatives. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. An 80-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Did the Department properly deny Petitioner's application for 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 is a senior, disabled, or veteran.
2. Petitioner received a gross monthly benefit of [REDACTED] from social security RSDI.

3. Petitioner had Medicare coverage, and Petitioner paid \$164.90 per month for a Medicare Part B premium.
4. Petitioner lived with her spouse, and Petitioner's stepchild lived with them approximately 10 days per month.
5. Petitioner paid rent of \$1,500.00 per month, and Petitioner was responsible for paying for utilities (including heating and cooling).
6. Petitioner's spouse worked for [REDACTED] and he did not typically work during the summer.
7. Petitioner's spouse received the following wages from [REDACTED]
 - a. July 28, 2023, gross pay of [REDACTED]
 - b. August 4, 2023, gross pay of [REDACTED]
 - c. August 11, 2023, gross pay of [REDACTED]
 - d. August 25, 2023, gross pay of [REDACTED]
8. Petitioner applied for FAP benefits from the Department during the [REDACTED] of 2023 when her spouse's income decreased.
9. On June 26, 2023, the Department mailed a verification checklist to Petitioner to obtain information to determine Petitioner's eligibility.
10. Petitioner did not provide her verification to the Department as instructed.
11. On July 10, 2023, the Department mailed a notice of case action to Petitioner to notify her that her application for FAP benefits was denied because she did not provide verifications as instructed.
12. Petitioner applied for FAP benefits from the Department again.
13. On July 25, 2023, the Department mailed a verification checklist to Petitioner to obtain information to determine Petitioner's eligibility.
14. Petitioner did not provide her verification to the Department as instructed.
15. On August 7, 2023, the Department mailed a notice of case action to Petitioner to notify her that her application for FAP benefits was denied because she did not provide verifications as instructed.
16. On [REDACTED] 2023, Petitioner applied for FAP benefits from the Department again, so the Department mailed a verification checklist to Petitioner to obtain information to determine Petitioner's eligibility.

17. Petitioner provided her verification to the Department as instructed.
18. The Department approved Petitioner for FAP benefits.
19. The Department budgeted a \$337.20 per month child support deduction.
20. Subsequently, the Department determined that it erroneously budgeted a medical expense, so the Department removed the medical expense and corrected the budget. This resulted in Petitioner's net income being over the limit for FAP.
21. On September 27, 2023, Petitioner requested a hearing.
22. On September 29, 2023, the Department issued a notice of case action to Petitioner to notify her that she was approved for FAP benefits in error. The Department notified Petitioner that she was ineligible for FAP benefits because her household income exceeded the limit.

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) 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 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 is disputing the Department's decision to deny her application(s) for FAP benefits for the summer months when her spouse's income was reduced. The Department denied Petitioner's application(s) for FAP benefits because Petitioner did not provide verifications as instructed.

Verification is usually required by the Department at the time of application or redetermination. BAM 130 (January 1, 2023), p. 1. The Department must tell a client what verification is required, how to obtain it, and the due date. *Id.* at p. 3. The Department must allow the client 10 calendar days to provide requested verification. *Id.* at p. 7. The client must obtain the verification, but the local office must assist if the client needs it and asks for help. *Id.* Verifications are only considered timely if they are received by the due date. *Id.* The Department must send a Negative Action Notice when the client refuses to provide the verification, or the client has failed to provide the verification by the due date. *Id.*

In this case, the Department requested verification from Petitioner because the Department needed additional information to determine Petitioner's eligibility for FAP benefits. The Department properly instructed Petitioner what verification was required, how to obtain it, and the due date. The Department also properly allowed Petitioner 10 calendar days to provide the verification. It was Petitioner's responsibility to provide the verification to the Department by the due date. When the Department did not receive the verification by the due date, the Department denied Petitioner's application for FAP benefits because Petitioner failed to provide the verification by the due date. The Department properly denied Petitioner's application for FAP benefits on July 10, 2023, and August 7, 2023.

After the Department denied Petitioner's application for FAP benefits on July 10, 2023, and August 7, 2023, Petitioner reapplied for FAP benefits, and Petitioner provided the Department with verification as instructed. The Department was then able to determine Petitioner's eligibility for FAP benefits, and the Department determined that Petitioner's household income was over the net income limit.

For a client to be eligible for FAP benefits, the client's household income must not exceed the applicable monthly income limit by family size. RFT 250 (October 1, 2022), p. 1. The applicable monthly income limit for a household with a senior, disabled, or veteran is the household's net income. *Id.* The net income limit for a household size of two was \$1,526.00. *Id.* Petitioner had a household size of two because Petitioner and her spouse lived together. BEM 212 (January 1, 2022), p. 1. Petitioner's stepchild was properly excluded from Petitioner's household size because the child did not reside more than half of the month in Petitioner's household. *Id.* at 2. Since Petitioner had a household size of two, \$1,526.00 was the applicable net income limit for Petitioner's household.

To determine a client's countable income, the Department must use past income to prospect income for the future, unless changes are expected. BEM 505 (October 1, 2022), p. 6. In general, the Department uses income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. *Id.* The 30-day period begins 30 days before the interview date or the date the information was requested. *Id.* If income from the past 30 days does not appear to accurately reflect what is expected to be received in the benefit month, and fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month, then the Department uses income from the past 60 or 90 days. *Id.*

Based on the evidence presented, Petitioner received gross pay of [REDACTED] per month from social security RSDI, and Petitioner's spouse received income from his employment at [REDACTED]. From July 28, 2023, through August 25, 2023, Petitioner's spouse received [REDACTED]. This equals an average weekly pay of [REDACTED]. Weekly pay is multiplied by 4.3 to calculate a standard monthly amount. *Id.* at p. 8. Thus, Petitioner's spouse's monthly income was [REDACTED]. Gross countable earned income is reduced by a 20% earned income deduction. BEM 550 (April 1, 2023), p. 1.

Petitioner's spouse's countable income after the earned income deduction was \$1,283.00. Thus, Petitioner and her spouse had a total combine countable income of [REDACTED] per month.

Petitioner is eligible for a standard deduction of \$193.00 for a household size of two. RFT 255 (February 1, 2023), p. 1. Petitioner is eligible for a medical expense deduction of \$165.00 for the amount Petitioner had to pay for her Medicare Part B premium. Petitioner is eligible for a child support deduction of \$337.20 for child support paid. Petitioner is eligible for an excess shelter deduction of \$1,205.00 based on her rent expense of \$1,500.00 per month and the maximum heat and utility standard. Petitioner's countable net household income after all deductions is [REDACTED] per month.

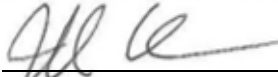
Petitioner's total net household income of [REDACTED] per month did not exceed the net income limit for a household size of two because the income limit was \$1,526.00 per month, and Petitioner's net household income was less than [REDACTED] per month. Therefore, the Department did not properly determine that Petitioner's net household income exceeded the limit to be eligible for FAP benefits, and the Department did not properly deny Petitioner's FAP application.

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 did not act in accordance with its policies and the applicable law when it denied Petitioner's application for Food Assistance Program benefits.

IT IS ORDERED, the Department's decision is **AFFIRMED IN PART** with respect to the Department's July 10, 2023, and August 7, 2023, denials, **and REVERSED IN PART** with respect to the Department's September 29, 2023, denial. The Department shall redetermine Petitioner's eligibility for FAP benefits beginning [REDACTED] 2023, consistent with this decision. The Department shall begin to implement this decision within 10 days of the date of mailing of this decision and order.

JK/ml



Jeffrey Kemm
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
Kimberly Kornoelje
Kent County DHHS
121 Martin Luther King Jr St SE
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MDHHS-Kent-Hearings@michigan.gov

Interested Parties
BSC3
M Holden
B Cabanaw
N Denson-Sogbaka
MOAHR

Via First Class Mail:

Petitioner
[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]