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GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

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██████████, MI ██████████

Date Mailed: December 27, 2023
MOAHR Docket No.: 23-008292
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 December 26, 2023, via conference line. Petitioner was present and was unrepresented. The Department of Health and Human Services (Department) was represented by Morgan Hafler, Assistance Payments Supervisor.

ISSUE

Did the Department properly deny Petitioner's Food Assistance Program (FAP) application?

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 ██████████, 2023, Petitioner submitted an application for FAP benefits (Exhibit a, pp. 10-19).
2. Petitioner's household consisted of herself and her minor child.
3. Petitioner had income from employment (Exhibit 32-34).
4. At the time of the application, Petitioner was on strike.
5. Petitioner had striker's pay in the gross amount of \$██████0 per week.

6. On November 21, 2023, the Department sent Petitioner a Notice of Case Action informing her that her application for FAP benefits was denied (Exhibit A, pp. 28-41).
7. Petitioner submitted a request for 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).

FAP

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 submitted an application for FAP benefits. Petitioner had income from employment. However, at the time of the application, Petitioner was on strike. The Department determined that Petitioner failed the prestrike gross income test and denied her application.

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. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (January 2020), pp. 6-7.

Groups with strikers are eligible only if they were eligible for or receiving FAP before the strike and continue to be eligible. BEM 227 (July 2013), p. 1. If pre-strike ineligibility is established, the Department will not determine current eligibility. BEM 227, p. 1. Pre- and post-strike eligibility is determined as follows: the Department will evaluate the group's nonfinancial eligibility on the day before the strike. BEM 227, p. 1. If those factors were met, the Department will evaluate current nonfinancial eligibility. BEM 227, p. 1. If the group was income eligible, the Department will combine the striker's pre-strike or current countable income, whichever is higher, plus Current countable income of other fiscal group members. BEM 227, p. 2.

The Department testified that it used Petitioner's pay statements from September 1, 2023, and September 18, 2023. The Department testified that it used the gross amount of \$[REDACTED] from Petitioner's pay statement on September 1, 2023. However, upon review, Petitioner's gross income on September 1, 2023, was \$[REDACTED], including her regular and overtime pay. The Department testified that it used the gross income amount of \$[REDACTED] from Petitioner's September 18, 2023 paycheck. However, upon review, Petitioner's gross income was \$[REDACTED], including her regular, overtime and holiday pay. Petitioner's average gross income multiplied by the 2.15 multiplier results in a gross income amount of \$[REDACTED]

Because all FAP applicants and recipients are eligible for enhanced authorization for Domestic Violence Prevention Services (DVPS), the monthly categorical income limit (200% of the poverty level), from RFT 250, column D (October 2023), p. 1, applies as the standard for FAP gross income eligibility. BEM 213 (January 2023), pp. 1-2. For a two-person FAP group, the applicable 200% gross income limit is \$3,288. As Petitioner's household gross income was \$[REDACTED], the gross income limit for FAP eligibility was not exceeded.

The Department did not present a FAP net income budget, nor was there a budget summary on the Notice of Case Action. Therefore, the undersigned Administrative Law Judge is unable to determine whether Petitioner's pre-strike net income exceeded the income limit for her group size. As Petitioner's gross income did not exceed the income limit for her group size, and the Department failed to establish that her net income exceeded the income limit for her group size, the Department failed to establish that it properly denied Petitioner's FAP application.

SER

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

In this case, Petitioner submitted a request for hearing, in part, to dispute the Department's actions with respect to her SER program benefit case. After the

commencement of the hearing, Petitioner testified that she did not wish to proceed with the hearing. The Request for Hearing related to the SER program was withdrawn.

DECISION AND ORDER

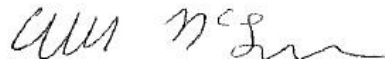
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's FAP application. Accordingly, the Department's decision is **REVERSED**.

Pursuant to the withdrawal of the hearing request filed in this matter, the Request for Hearing regarding the SER program is **DISMISSED**.

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. Reinstate and reprocess Petitioner's [REDACTED], 2023 FAP application;
2. If Petitioner is eligible for FAP benefits, issue supplements she is entitled to receive; and
3. Notify Petitioner of its decision in writing.

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
Caryn Jackson
Wayne-Hamtramck-DHHS
12140 Joseph Campau
Hamtramck, MI 48212
**MDHHS-Wayne-55-
Hearings@michigan.gov**

Interested Parties

M. Holden
N. Denson-Sogbaka
B. Cabanaw
J. McLaughlin
E. Holzhausen
BSC4

Via-First Class Mail :

Petitioner

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