



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

██████████  
██████████  
██████████, MI ██████████

Date Mailed: January 26, 2024  
MOAHR Docket No.: 23-009177  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner**

**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 January 17, 2024 by telephone. Petitioner appeared and was represented by Authorized Hearing Representative (AHR) ██████████. The Department of Health and Human Services (Department) was represented by Demetria Davis, Family Independence Manager.

**ISSUE**

Did the Department properly close Petitioner's Food Assistance Program (FAP) case, effective November 1, 2023?

**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 through October 31, 2023.
2. Petitioner has two minor children, the youngest (Child 2) born ██████████ 2023. (Exhibit 1, p. 2).
3. On July 17, 2023, Petitioner reported to the Department that ██████████ (MF), the father of her minor children, moved into her home. (Exhibit A, pp. 3, 58).
4. Effective July 17, 2023, Petitioner's household is comprised of herself, MF, and her two (2) minor children.

5. As of September 2023, Petitioner was employed by the [REDACTED] (Employer).
6. No member of Petitioner's household was 60 years of age or older, disabled, or a disabled veteran.
7. On July 17, 2023, the Department sent Petitioner a verification checklist (VCL) requesting income verification for MF and verification that Petitioner had applied for a Social Security Number for her infant child. (Exhibit A, pp. 9-12).
8. On July 25, 2023, the Department sent Petitioner a VCL requesting income verification for MF, verification that Petitioner had applied for a Social Security Number for her infant child, and verification of parentage of both of Petitioner's minor children. (Exhibit A, pp. 19-22).
9. On August 28, 2023, the Department sent Petitioner a VCL requesting income verification for MF. (Exhibit A, pp. 24-26).
10. On September 7, 2023, the Department sent Petitioner a VCL requesting verification that Petitioner had applied for a Social Security Number for her infant child. (Exhibit A, pp. 24-26).
11. On August 28, 2023, the Department provided Petitioner with an Employment Verification Form (MDHHS-38) for MF's income. (Exhibit A, pp. 27-29).
12. MF himself completed and returned the employment verification form to the Department multiple times in August 2023
13. MF reported his income as self-employment as a sub-contractor. (Exhibit A, pp. 37-51).
14. On September 12, 2023, the Department advised Petitioner by email that the verification form was required to be completed by MF's employer because MF was not self-employed. (Exhibit A, p. 52).
15. On September 19, 2023, the Department issued a Notice of Case Action closing Petitioner's Food Assistance Program case, effective November 1, 2023, due to
  - a. Net income exceeding the limit, and
  - b. Verification of earned income payment of Petitioner's partner and verification of application for Social Security Number for infant child not being returned.(Exhibit A, p. 54-57).
16. Petitioner submitted a request for hearing on December 11, 2023 regarding closure of her FAP case and disputing the calculation of her group's income. (Exhibit A, pp. 6-7).

## **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.

Petitioner requested a hearing to dispute the determination of her group's income and the resulting closure of her FAP benefits. (Exhibit A, pp. 6-7). A Notice of Case Action was issued to Petitioner on September 19, 2023, closing her FAP case effective November 1, 2023 due to excess net income and failure to verify MF's income and to provide Child 2's social security number. (Exhibit A, pp. 53-57).

The Department determined Petitioner's group exceeded the net income limits based on Petitioner's earnings in August 2023 from Employer and MF's income from July 2023. The Department's evidence showed that it based its calculation of net income on a group size of 3 and gross monthly earned income of [REDACTED]. (Exhibit A, p. 61).

For purposes of FAP, group composition is based on who lives in the household, the relationship of household members to each other, whether the household members purchase and prepare foods together, and whether the household members are living in an eligible living situation. BEM 212 (January 2022), p. 1. In this case, Petitioner, the father of the minor children, and the two (2) minor children reside together. Because MF is the father of the minor children, he is a mandatory group member. BEM 212, p. 1. Therefore, Petitioner's household size was 3 until July 17, 2023, when the household size increased to 4 when MF moved into the residence. (Exhibit A, pp. 3, 58)

Once the group composition is determined, the Department must determine if any group member is disqualified and therefore ineligible for FAP assistance. BEM 212, pp. 8-9. Individuals are disqualified for failure to provide a social security number, among other things. BEM 212, p. 8. As of August 28, 2023, the Department had not received social security numbers for Child 1 or Child 2 and had been verbally requesting the numbers for both since at least June 28, 2023. (Exhibit A, p. 58). However, notwithstanding the foregoing, none of the VCLs introduced by the Department in Exhibit A include a request for the social security number of Child 1, and only the VCLs dated July 25, 2023 and September 7, 2023 request the social security number of Child 2. (Exhibit A, pp. 19 – 20, 34).

No evidence was presented by Petitioner as to any efforts she made prior to the closure of her FAP case to obtain Child 1 and Child 2's social security numbers. Petitioner did provide proof of her current effort to obtain a social security number for Child 2 in the form of correspondence from the Social Security Administration dated January 12, 2024. (Exhibit 1, p. 2). This proof may be beneficial to Petitioner in any new application for FAP benefits she submits to the Department but cannot satisfy the necessary requirements effecting the closure of her FAP case at issue here. At the time the Department determined Petitioner's net income eligibility for FAP, it properly excluded Child 2 from the group due to the lack of social security number and concluded that the group size was 3.

Despite the Notice of Case Action dated September 19, 2023 omitting MF as a group member, the Department provided the FAP-EDG Net Income calculation in the hearing packet, which reflects a certified group size of 3. (Exhibit A, p. 61). In calculating net income, the Department concluded that the household had ██████ in monthly earned income. The Department testified that it based this calculation by prospecting Petitioner's earnings from Employer based on income she received in September 2023 and MF's income as he reported in the employment verifications he completed and returned to the Department.

Prospective income is income not yet received but expected and is based on the past 30 days when that income appears to accurately reflect what is expected going forward. BEM 505 (October 2022), pp. 1, 6. The Department may only use prospective income if income verification was requested and received, payments were received by the client after the verifications were submitted, and there are no known changes in the income being prospected. BEM 505, p. 3.

For the purposes of FAP, the Department must convert income that is received more often than monthly into a standard monthly amount. The average of weekly amounts are multiplied by 4.3 and the average of bi-weekly amounts are multiplied by 2.15. BEM 505, pp. 8-9.

The Department testified that it relied on Petitioner's earnings in August 2023 from Employer in calculating the group's income. However, the Department did not provide the specific amount it determined to be Petitioner's income for that month.

Despite the Department not providing specific amounts it considered in calculating Petitioner's income, Petitioner provided proof of her August 2023 income in advance of the hearing, which was consistent with information Michigan Works and Petitioner provided to the Department on August 21, 2023 showing she was paid ██████ on August 5, 2023 and ██████ on August 19, 2023 by Employer. (Exhibit A, p. 58), Exhibit 1, p. 1). Bi-weekly pay periods are multiplied by 2.15 to determine a standard monthly amount. BEM 505, pp. 8-9. ██████ bi-weekly computes to ██████ per month.

Notwithstanding the foregoing, Petitioner testified that she notified the Department by telephone in August 2023 that she was no longer working for Employer. She and her AHR also both testified that Petitioner's understanding is that her income and hours were reported to the Department directly by her employer through Michigan Works and thus that the Department was aware of when Petitioner's employment ended. FAP recipients must report changes in their income to the Department within 10 days of starting or stopping employment. BAM (July 2023), p. 11-12. Given the lengthy and detailed notes regarding multiple interactions between the Department and Petitioner in August 2023, Petitioner's testimony that she reported her end of employment with Employer to the Department was not supported by the evidence. (Exhibit A, p. 58). Therefore, based on the information available to the Department, the Department properly considered Petitioner having monthly earned income totaling [REDACTED]

The Department also considered MF's income in determining Petitioner's FAP eligibility. Because MF is a mandatory group member, his income is considered in determining the group's FAP eligibility. BEM 203, BEM 550. The Department testified that, although MF's employment verifications were not completed by an employer as required by policy, it considered MF's self-reported income and that the Department used the amounts MF disclosed on the employment verifications he returned. The amounts he reported were for July 2023 and total [REDACTED] (Exhibit A, pp. 38, 43, 48).

For purposes of evaluating income for FAP benefits, someone who runs their own business is self-employed. BEM 502 (October 2019), p. 1. To determine if someone is self-employed for purposes of FAP benefits, the Department must evaluate a non-exclusive list of indicators such as who directs the work hours, whether the individual uses their own tools to perform the job, whether the individual is responsible for determining the methods of performing the job, and whether the individual is responsible for the job being performed. BEM 502, pp. 1-2. One does not need to meet all of these indicators to be determined to be self-employed. BEM 502, p. 2.

The Department did not offer any testimony or other evidence in support of its conclusion that MF is not self-employed. It did not present documentation of the information it used in reaching the determination that MF is not self-employed, which does not comply with policy. BEM 502, p. 1. Conversely, MF consistently reported himself of be a sole proprietor on each employment verification he returned to the Department. (Exhibit A, pp. 38-41, 43-46, 48-51). AHR also testified that MF is a sole proprietor. In the absence of any testimony or other evidence by the Department to the contrary, MF is found to be a sole proprietor.

Total proceeds of self-employed individuals must be reduced by allowable expenses to determine the countable income from self-employment. BEM 502, pp. 3-4. Based on the budget summary and FAP-EDG Net Income Results provided by the Department, compared to the Petitioner's August 2023 income and MF's self-reported income, the Department did not reduce MF's total proceeds by allowable expenses for a self-employed individual. (Exhibit A, pp. 54 – 55, 61. See also p. 62). Therefore, the Department did not properly calculate MF's gross monthly income.

In sum, the income calculation, which provided the basis for closing Petitioner's FAP case, is not consistent with applicable policy or lacks evidence that it is.

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 calculated Petitioner's income and closed her FAP case for excess net income.

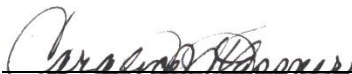
### **DECISION AND ORDER**

Accordingly, the Department's decision is **REVERSED**.

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. Redetermine Petitioner's eligibility for FAP benefits, effective November 1, 2023 ongoing;
2. If Petitioner is eligible for any supplemental FAP benefits, issue supplemental payments to Petitioner for any FAP benefits that she was eligible to receive but did not, from November 1, 2023 ongoing; and
3. Notify Petitioner of its decision in writing.

CML/ml

  
\_\_\_\_\_  
**Caralyce M. Lassner**  
Administrative Law Judge

