



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: February 22, 2024
MOAHR Docket No.: 23-009963
Agency No.: [REDACTED]
Petitioner: [REDACTED]

[REDACTED] MI [REDACTED]

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 by telephone on February 12, 2024. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Denise Newsom, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefits effective December 1, 2023?

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits due to excess net income effective February 1, 2024?

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. (Exhibit A, pp. 7, 10 (Line 68)).
2. On November 15, 2023, the Department issued a Notice of Case Action (NOCA) to Petitioner decreasing Petitioner's FAP group size and benefit amount, effective December 1, 2023, due to Petitioner's daughter, [REDACTED] (ML), being an ineligible student. (Exhibit A, pp. 20 – 21).

3. On December 15, 2023, Petitioner timely completed a renewal application for FAP benefits online through MiBridges. The renewal disclosed employment income for Petitioner and ML and removed unemployment income for Petitioner. (Exhibit A, pp. 7 – 9).
4. On December 26, 2023, Petitioner requested a hearing to dispute ML's removal from the FAP group due to ineligibility. (Exhibit A, p. 3 – 5).
5. On January 8, 2024, the Department processed Petitioner's renewal application including updating the income for Petitioner and ML, receiving verification of income for Petitioner and ML, retrieving a consolidated income report, and completing a budget of the group's income. (Exhibit A, p. 10, Line 73 and 74; pp. 27 – 46, 48).
6. On January 8, 2024, the Department issued a NOCA to Petitioner closing her FAP benefits effective February 1, 2024, due to excess net income. (Exhibit A, pp. 47 – 48).
7. On January 18, 2024, the Department submitted a hearing packet to the Michigan Office of Administrative Hearings and Rules (MOAHR), which includes documentation substantiating the facts outlined previously herein. (Exhibit A, p. 1).

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 submitted a request for hearing to the Department on December 26, 2023, disputing ML's removal from the FAP group due to her student ineligibility. (Exhibit A, p. 3 – 5). Subsequent to submitting her request for hearing, Petitioner's FAP case was closed, effective February 1, 2024, for excess net income. (Exhibit A, pp. 47 – 48). Petitioner's FAP case was closed due to information gathered during Petitioner's redetermination process and the information related to the closure of her case was included in the documents provided in the hearing packet. (Exhibit A, pp. 1, 7 – 16, 27 – 48). At the hearing, Petitioner noted that she disputed the closure of her FAP case and therefore, as the documents related to closure of her FAP case were provided in

advance of the hearing, Petitioner's dispute of closure of her FAP benefits will also be addressed.

FAP Benefits for December 2023 to January 2024

Each time the Department evaluates eligibility of a person and household for FAP benefits, it must determine who must be included in the FAP group. BEM 212 (January 2022), p. 1. People who live together and purchase and prepare food together must be included in the same group. BEM 212, p. 1. Additionally, parents and their children under the age of 22 who reside together must be included in the same group. BEM 212, p. 1. However, a person in student status who does not meet the criteria set forth in BEM 245 is deemed an ineligible student and is not included in the FAP group. BEM 212, p. 9.

For purposes of FAP, a person is in student status if they are age 18 – 49 and enrolled half-time or more in a) a vocational, trade, business, or technical school that usually requires a high school diploma or GED, or b) at college or university that offers degree programs regardless of whether a diploma is required. In order for a person in student status to be eligible for FAP benefits, they must meet at least one of the criteria listed in the student status policy, such as maintaining employment for an average of twenty (20) hours per week. BEM 245 (July 2023), pp. 3 – 6.

In this case, the Department issued a NOCA on November 15, 2023, decreasing Petitioner's FAP benefits, which stated that the decrease was based on a reduction in Petitioner's group size because the Department deemed ML an ineligible student. (Exhibit A, pp. 20 – 21). However, the Department did not produce any evidence that it requested information from Petitioner concerning ML's student status before making this determination. ML would be an eligible student member of Petitioner's FAP group if she was employed and paid for at least 20 hours of employment weekly. Because Petitioner challenged the Department's exclusion of ML from her FAP group due to her student status in the November 15, 2023 NOCA and the Department failed to show that it had assessed ML's student status for December 2023 ongoing, the Department failed to satisfy its burden of showing that it properly excluded ML from Petitioner's group for December 2023 and January 2024.

FAP Case Closure

Subsequent to the NOCA issued on November 15, 2023, Petitioner completed a renewal application on December 15, 2023, which was due January 1, 2024. (Exhibit A, pp. 7 – 9). Within the renewal application Petitioner updated her own employment, confirmed ML's ongoing employment, and discontinued her unemployment compensation, among other disclosures. (Exhibit A, pp. 7 – 8). After it processed Petitioner's renewal application, the Department issued a NOCA on January 8, 2024 closing Petitioner's FAP benefits due to excess net income effective February 1, 2024. (Exhibit A, pp. 47 – 48).

The Department must periodically review an individuals' eligibility for active programs and may utilize the forms used to conduct such a review to redetermine eligibility of active programs. BAM 210 (October 2023), p. 1. Petitioner must completely and truthfully answer all questions on [departmental] forms and is responsible for reporting changes to the Department. BAM 105 (October 2023), pp. 9 and 11 – 13. Changes in circumstances may be discovered through a report by Petitioner, computer tape matches, quality assurance reviews, or other means. BAM 220 (November 2023), p. 1. Once the Department is aware of a change in income that will affect eligibility or benefit level, the Department must complete a new budget. BEM 505 (October 2023), p. 10.

In determining Petitioner's FAP benefit amount, the Department must consider all countable earned and unearned income available to the Petitioner. BEM 500 (April 2022), 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 going forward. BEM 505, 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.

In this case, Petitioner provided paystubs for herself and ML. Petitioner was paid weekly and ML was paid bi-weekly. The Department testified that it used Petitioner's paystubs from November 10, November 17, November 24, December 1, December 8, December 15, December 22, and December 29, 2023 when determining her income. These paystubs total [REDACTED] (Exhibit A, pp. 39 – 46), which is an average of [REDACTED] per week. When converted to a standard monthly amount, Petitioner's income was [REDACTED]. The Department further testified that it used ML's paystubs for December 1, December 15, and December 29, 2023. When those paystubs are added together, they total [REDACTED] (Exhibit A, pp. 35 – 37) and average out to [REDACTED] bi-weekly. Converted to a standard monthly amount, ML's income was [REDACTED]. Therefore, the amounts for Petitioner and ML total [REDACTED] in gross countable earned income, not [REDACTED]. BEM 550 (April 2023), p. 1. (Exhibit A, p. 48).

The Department also included [REDACTED] in unearned income, which appears, but was not confirmed, to be Petitioner's unemployment income of [REDACTED] from January 6, 2024, converted to a standard monthly amount based on a bi-weekly cycle. (Exhibit A, pp. 16, 48). Petitioner testified that she did not receive both earned income and unemployment compensation for the same pay periods. The Department failed to establish that either Petitioner received more than one single [REDACTED] unemployment payment for January 2024 or that it accurately prospected Petitioner's unearned income for months after Jan 2024 if Petitioner remains eligible for FAP. Given the Department's policy that it must prospect income when there are known changes in Petitioner's income, which is indicated by employment earnings and unemployment compensation, the Department

should have inquired further as to Petitioner's current, and anticipated future circumstances when it determined Petitioner's group's income. BEM 505, p. 3 – 4. See also [Remuneration and Underemployed 2012.pdf \(michigan.gov\)](#).

Based on the foregoing, Petitioner's gross countable income for January 2024 was [REDACTED] the corrected prospective gross earned income for the household, and an additional [REDACTED] in unearned income for the unemployment compensation she received in January 2024. Therefore, the Department did not satisfy its burden that it acted in accordance with policy when it determined Petitioner's group's gross countable income, with regard to either the earned or unearned income and as a consequence, the household's net income.

As noted previously herein, Petitioner testified that her employment ended on January 26, 2024 and she reported it to the Department. This may impact future benefits if the Department determines that her case should not have closed. Petitioner may also reapply based on her changed circumstances. Additionally, Petitioner testified that she is disabled and believes she has reported her disability to the Department. While Petitioner's disability status is not cited by Petitioner as an issue in this case, Petitioner was advised that she may bring this to the attention of the Department at any time. The Department also provided several options to the Petitioner to do so.

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 removed ML from Petitioner's FAP group and decreased Petitioner's FAP benefits, effective December 1, 2023 and the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FAP benefits due to excess net income effective February 1, 2024.

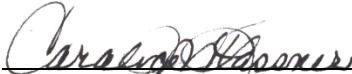
DECISION AND ORDER

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 group size for FAP benefits effective December 1, 2023 based on ML's student eligibility status;
2. Redetermine Petitioner's eligibility for FAP benefits based on her group size for December 2023 and January 2024;
3. If Petitioner is eligible for any supplemental FAP benefits, issue supplemental payments to Petitioner for any FAP benefits she was eligible to receive but did not, from December 1, 2023 through January 31, 2024;
4. Redetermine Petitioner's eligibility for FAP benefits effective February 1, 2024;
5. If Petitioner is eligible for any supplemental FAP benefits, issue supplemental payments to Petitioner for any FAP benefits she was eligible to receive but did not, effective February 1, 2024 ongoing; and
6. Notify Petitioner of its decision in writing.

CML/ml



Caralyce M. Lassner
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
Dora Allen
Wayne-Gratiot/Seven-DHHS
4733 Conner Suite G 7 Lappin
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MDHHS-Wayne-76-Hearings@michigan.gov

Interested Parties

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M Holden
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Via First Class Mail:

Petitioner

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[REDACTED] MI [REDACTED]