



GRETCHEN WHITMER
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
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: March 1, 2024
MOAHR Docket No.: 24-000542
Agency No.: [REDACTED]
Petitioner: [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 21, 2024. Petitioner was not present but was represented by her spouse and Authorized Hearing Representative, [REDACTED] (Spouse), who was present. The Department of Health and Human Services (Department) was represented by Lori Turner, Eligibility Specialist, and Corey Reed, Assistant Payments Supervisor.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefits effective September 20, 2023 ongoing?

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 [REDACTED] 2023, Petitioner applied for FAP benefits for herself, Spouse, [REDACTED] year old son [REDACTED] (MM), and [REDACTED] year old son [REDACTED] (OM).
2. The Department initially denied the application and Petitioner filed a hearing request. In a December 21, 2023, Hearing Decision in MOAHR Docket no. 23-008353, the ALJ reversed the Department and ordered the Department to reprocess the application.

3. On December 28, 2023, the Department reprocessed Petitioner's FAP application and sent Petitioner a Benefit Summary indicating that the household was approved for FAP as follows:
 - a. October 1, 2023 – October 31, 2023, \$189.00,
 - b. November 1, 2023 – November 30, 2023, \$161.00, and
 - c. December 1, 2023 – December 31, 2023, \$161.00.

(Exhibit 1, p. 2)

4. On January 7, 2024, Petitioner submitted a request for hearing to the Department regarding the starting date of Petitioner's FAP benefits and disputing the Department's calculation of the group's income. (Exhibit A, pp. 3 – 4).

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 has requested a hearing based on the calculation of her FAP benefits and the start date of those benefits. (Exhibit A, pp. 3 – 4). Petitioner submitted an application for FAP to the Department on [REDACTED] 2023. On December 28, 2023, after the Department's initial denial of the application was reversed following an administrative hearing, the Department processed the application and issued supplemental benefits to Petitioner for the period of September 20, 2023 through December 31, 2023 without detailed information regarding Petitioner's FAP group composition or budget calculation.

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, 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.

In this case, there were four (4) people living in Petitioner's household on [REDACTED] 2023: Petitioner, Spouse, MM, and OM. Petitioner was [REDACTED] years old, Spouse was

█ years old, MM was █ years old, and OM was █ years old. The Department provided a FAP budget effective January 1, 2024 and although the budgeted benefit period is the incorrect period at issue, it shows that there were only three individuals included in the FAP group. (Exhibit A, pp. 9 – 10). The Department testified that that MM was an ineligible student because he was a full time student and working in employment less than 20 hours per week and, therefore, not included in the FAP group.

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. BEM 245 provides that 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, pp. 2 – 6. The Department did not offer evidence of how it reached its determination that MM was an ineligible student and therefore failed to satisfy its burden of showing that it acted in accordance with Department policy when it made a determination regarding MM's student status.

The Department determines a Petitioner group's eligibility for program benefits based on the group's actual income and/or prospective income of members of the group. Prospective income is income not yet received but expected going forward. BEM 505, pp. 1, 6. 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. Additionally, if a person in student status is deemed an ineligible student for purposes of FAP, that person's income is excluded from the FAP budget calculation. BEM 550, p. 2.

The Department further testified that Petitioner's group has a member over 60 years of age and a disabled member; therefore, Petitioner's group is a Senior/Disabled/Disabled Veteran (SDV) group. BEM 550 (April 2023), p. 1.

To complete the budget in Petitioner's case, the Department testified that it considered the following income: Petitioner's paystubs from two (2) jobs, both with pay dates of September 22, 2023, and September 29, 2023; and MM's income when the Department budgeted the group's income. It further testified that the pay dates it relied on for MM were September 1, 2023, September 8, 2023, September 15, 2023, and September 22, 2023.

The Department budgeted █ in earned income for Petitioner's group on the net income budget it presented. (Exhibit A, pp. 9 – 10). However, an initial review of the paycheck stubs provided by Petitioner reflect that one employer issued paychecks to Petitioner on September 1, 2023, September 15, 2023, and September 29, 2023, and the other employer issued paychecks weekly, based on paycheck stubs provided by Petitioner which are dated September 1, 2023, September 15, 2023, and September

22, 2023. (Exhibit 2, pp. 3 – 8). This evidence is in conflict with the testimony of the Department and which of Petitioner's paycheck stubs it used to calculate the group's income. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's income.

Additionally, the Department testified that it included MM's income in the income calculation, which is contrary to policy if MM was an ineligible student. If MM was not an ineligible student, then he should be included in the group and his income is correctly counted. Therefore, the Department did not act in accordance with Department policy when it calculated Petitioner's group's countable earned income when it included MM's income after excluding him from the group as an ineligible student.

While the Benefit Notice showed, and Spouse confirmed, that the household received FAP benefits for Oct 2023 of \$189 and for \$161 for November and for December 2023, all paid on December 28, 2023, the Benefit Notice did not include a budget showing the information the Department considered in calculating the monthly FAP allotment and the Department failed to provide budgets at the hearing showing the information considered in calculating the budgets for those months or to provide any explanation for why the monthly benefits changed from October to November and December 2023 and then again to \$151 monthly effective January 2024. Therefore, the Department failed to satisfy its burden of showing that it properly calculated the amount of benefits issued for October through December 2023. Further, Petitioner's FAP group is eligible for prorated benefits from the date of application if the group is eligible for the application month. BAM 115, p. 26. While the Department testified that the FAP supplements issued to Petitioner on December 28, 2023 included a \$45 supplement for the period from September 19, 2023, the date of application, to the end of the month, it did not provide any evidence to support this calculation. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FAP benefits for September 20, 2023 through December 31, 2023.

At the hearing and on various pages included in Exhibits 1 and 2, Spouse argued that the group's FAP case had improperly closed. However, the hearing request received by the Department on January 7, 2024 concerned only the calculation of Petitioner's group's income and the FAP benefit calculation from September 2023 ongoing and the Department prepared a response to only those issues. It appears that any potential case closures arose after the January 7, 2024 hearing request. Petitioner and Spouse are advised that if they dispute a case closure, they may request a hearing with a local Department office.

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 made a determination regarding MM's student status and that it did not act in accordance with Department policy when it calculated Petitioner's group's countable earned income.

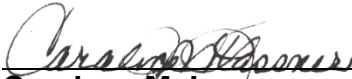
DECISION AND ORDER

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 group size for FAP benefits effective September 20, 2023;
2. Redetermine Petitioner's eligibility for FAP benefits based on her group size and applicable household income for September 20, 2023 ongoing;
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 September 20, 2023 ongoing;
4. Notify Petitioner of its decision clearly, in writing, and in accordance with policy.

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
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Petitioner

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