



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 14, 2024
MOAHR Docket No.: 24-000827
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 March 6, 2024. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Crystal Stephens, Assistance Payments Worker, and Alice Gilmer, Family Independence Manager.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefits effective March 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 for a group of two (2) and was recently receiving [REDACTED] per month through January 31, 2024, which was reduced to [REDACTED] for the month of February 2024.
2. On January 24, 2024, the Department issued a Notice of Case Action (NOCA) further reducing Petitioner's FAP benefits to [REDACTED] effective March 1, 2024. (Exhibit A, pp. 7 – 8).
3. On January 29, 2024, the Department received Petitioner's request for hearing disputing the reduced amount of her FAP benefits and lodging a complaint of

discrimination against the Department with the United States Department of Agriculture (USDA). (Exhibit A, pp. 4 – 6).

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 to dispute the reduction in the amount of her FAP benefits to [REDACTED] and to lodge a complaint of discrimination against the Department with the USDA program. (Exhibit A, pp. 4 – 6). The Department received updated income information regarding Petitioner and issued a NOCA on January 24, 2024, reducing Petitioner's monthly FAP benefits to [REDACTED] for her group of two (2), effective March 1, 2024. (Exhibit A, pp. 7 – 8).

At the start of the hearing, Petitioner was advised that complaints alleging misconduct or mistreatment by a state employee cannot be considered by MOAHR and must be referred to the Department or its customer service unit and that a written complaint against a local Department office may be sent to the local office director's or district office manager's attention. Petitioner may also find a list of Department county directors and their phone numbers at www.michigan.gov/dhs-countyoffices. See also BAM 105 (October 2023) and Mich Admin Code, R 792.1102(3), for more specific information. Complaints may also be filed with the USDA by sending a letter via fax at (833) 256-1665, via email at FNCSIVILRIGHTSCOMPLAINTS@usda.gov, by calling (833) 620-1071, or via mail to the Food and Nutrition Service- USDA, 1320 Braddock Place, Room 334, Alexandria, VA 22314. BAM 105, pp. 5-6. Because personnel and non-discrimination complaints are not addressed by MOAHR, this decision is limited as to Petitioner's dispute regarding the amount of her FAP benefits.

When the Department is aware of a change in income that will affect eligibility or benefit level, the Department must complete a budget calculation. BEM 505 (October 2023), p. 10. To determine whether the Department properly calculated 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. For child support income received for a minor child living in the home, the Department counts the gross benefit amount as unearned income. BEM 503 (January 2023), pp. 6, 9. When Petitioner has

earned income, 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 and is based on the past 30 days when that income appears to accurately reflect what is expected going forward. BEM 505, pp. 1, 6. The Department must prospect an individual's income if income is received on a regular schedule but varies from check to check. BEM 505, pp. 2 – 4. 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. Prospective child support is determined based on the three-month average received for three months prior to the budgeted month, excluding amounts that are unusual and not expected to continue. BEM 505, p.4.

In this case, although the Department testified that it was uncertain as to what prompted it to review Petitioner's income as Petitioner did not appear to be due for a FAP redetermination or any periodic review, it became aware of changes in Petitioner's income because it received multiple check stubs in the eligibility determination month (EDM) as of January 12, 2024. (See also Exhibit A, p. 1). The Department testified that the January 24, 2024 NOCA was generated in response to the changes in Petitioner's income and decreased Petitioner's benefits to \$135 per month, however the NOCA indicates Petitioner's benefits were decreased to \$23, not \$135. (Exhibit A, pp. 7 – 8).

When asked about the budget summary included on the NOCA, the Department reported that Petitioner's earned income was [REDACTED] per month but could not identify the pay dates or amounts it used to reach its conclusion for the January 24, 2024 NOCA¹. In contrast, Petitioner testified that she works an average of 35 hours per week and is paid [REDACTED] per hour. As an employee who is paid bi-weekly, Petitioner's self-reported income standardizes to the gross amount of [REDACTED] per month. The Department also included [REDACTED] in unearned income, arising from Petitioner's receipt of child support, which the Petitioner confirmed is the average amount she receives.

Based on the discrepancy between Petitioner's testimony as to her earned income amount and the Department's inability to provide the specific pay dates and amounts it used to calculate Petitioner's earned income for the January 24, 2024 NOCA, the Department failed to satisfy its burden of showing that it properly calculated Petitioner's income.

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 earned income.

¹ The Department testified that it relied on Petitioner's paystubs dated February 1, 2024 and February 15, 2024, both of which were issued after the January 24, 2024 NOCA. When asked for clarification, the Department testified that it calculated Petitioner's earned income to be [REDACTED] for the January 24, 2024 NOCA but was still unable to identify the pay dates or amounts it used to reach its conclusion.

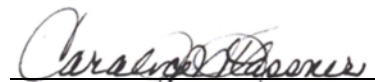
DECISION AND ORDER

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 for the period of March 1, 2024 ongoing;
2. 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 March 1, 2024 ongoing; and
3. Notify Petitioner of its decision in writing.

CML/pt



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

Denise Key-McCoggle
Wayne-Greydale-DHHS
27260 Plymouth Rd
Redford, MI 48239

MDHHS-Wayne-15-Greydale-Hearings@michigan.gov

Interested Parties

BSC4
M Holden
B Cabanaw
N Denson-Sogbaka

Via First Class Mail:

Petitioner

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