



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 11, 2024  
MOAHR Docket No.: 24-000900  
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 4, 2024. Petitioner was not present but was represented by his spouse, [REDACTED] (Spouse), an adult member of Petitioner's household. Muhammad Rashed served as interpreter. The Department of Health and Human Services (Department) was represented by Dania Ajami, Lead Eligibility Specialist.

### **ISSUE**

Did the Department properly close Petitioner's Food Assistance Program (FAP) case effective January 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 and had a certified household of six (6), including himself, Spouse, [REDACTED] year old son [REDACTED] (JA), and three minor children. (Exhibit A, pp. 5 – 6, 13).
2. On November 4, 2023, the Department sent a redetermination application to Petitioner, to be returned by December 4, 2023. Petitioner completed and returned the redetermination, with his paystubs, to the Department on November 15, 2023. (Exhibit A, pp. 12 – 23).

3. Petitioner's redetermination disclosed that all members of the household purchase and prepare food together and that his employment is the sole source of income to the household. (Exhibit A, pp. 13 – 14).
4. The paystubs provided by Petitioner with his redetermination application reflect that he is paid weekly and were dated October 20, 2023, October 27, 2023, November 3, 2023, and November 10, 2023. (Exhibit A, pp. 20 – 23).
5. On January 22, 2024, the Department processed Petitioner's redetermination and issued a Notice of Case Action (NOCA) closing Petitioner's FAP case due to excess gross income. The Department determined Petitioner's FAP group had [REDACTED] in monthly income. (Exhibit A, pp. 5 – 6, 24 – 25).
6. On January 26, 2024, Petitioner submitted a request for hearing to the Department to dispute the calculation of his income and stating that JA is no longer part of the FAP group. (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.

On January 26, 2024, Petitioner submitted a request for hearing to the Department to dispute closure of his FAP case due to excess gross income and to advise that JA is no longer part of the FAP group. The Department closed Petitioner's FAP case effective January 1, 2024 based on excess gross income.

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.

In this case, the Department concluded that Petitioner's certified FAP group size was six (6), comprised of Petitioner, Spouse, JA, and three (3) minor children. (Exhibit A, pp. 5 – 6, 13). JA was included in Petitioner's FAP group because, as an individual living in the household and under age 22, he was a mandatory group member. At the hearing and in his hearing request, Spouse sought to have JA excluded from the FAP group, testifying that JA resides in the household, is a college student, and works over 20 hours per week while attending school.

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, receiving financial assistance from the Perkins Loan or similar program, or be working in a work study program, among other things. BEM 245 (July 2023), pp. 3 – 6. Therefore, based on JA being a college student under age 22 living with his parents and being employed more than 20 hours weeks, the Department properly included JA in the FAP group.

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. In connection with Petitioner's FAP redetermination, the Department concluded that Petitioner's FAP group had excess gross income. Any household, without senior/disabled, or disabled veteran (SDV) group members, that has income in excess of the income limit for categorical eligibility, as set forth in RFT 250, has income in excess of the FAP gross income limit. BEM 213 (January 2023), pp. 1 – 2. For a FAP group size of six, the income limit for categorical eligibility is \$6,714. RFT 250 (October 2023).

Here, the Department concluded that Petitioner's FAP group had gross monthly income totaling [REDACTED] (Exhibit A, p. 28). In determining Petitioner's FAP benefit amount, the Department must consider all countable earned and unearned income available to the Petitioner and the FAP group. 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 the past 30 days of income if it appears to accurately reflect the income expected to be received in the benefit month and must discard any pay from the past 30 day period if it does not reflect the normal expected pay amounts. BEM 505, p. 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. BEM 505, pp. 8 – 9.

In this case, the Department presented paystubs that Petitioner included with his redetermination but testified that, rather than those paystubs, it believed it relied on Petitioner's earnings in December 2023 as shown on the Work Number, a database accessible to the Department where employers may voluntarily report employment information for Department clients, to calculate his FAP group's income, but could not confirm it had the Work Number. Notwithstanding that the Department did not know the specific source of its information, it testified that it used the following pay dates and amounts to calculate Petitioner's income:

December 1, 2023  
December 8, 2023  
December 15, 2023  
December 22, 2023  
December 29, 2023

[REDACTED]

These amounts total [REDACTED] and result in a standard monthly average of [REDACTED] considerably less than the \$ [REDACTED] limit identified by the Department as Petitioner's household's gross income. Further, the paystubs Petitioner presented with his redetermination and with the hearing request are not consistent with the income information that the Department testified it used.

Because JA is a FAP group member and Spouse testified that JA also had earned income, the Department would also have to include JA's income in calculating the household's gross income. However, the Department did not present any testimony that it included any of JA's income in calculating the household's income.

Based on the totality of the foregoing, the Department did not act in accordance with policy when it 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 did not act in accordance with Department policy when it calculated Petitioner's group's 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 January 1, 2024 ongoing;
2. If Petitioner is eligible for any supplemental FAP benefits, issue supplemental payments to Petitioner for any FAP benefits he was eligible to receive but did not, effective January 1, 2024 ongoing; and
3. Notify Petitioner of its decision in writing.

CML/ml

  
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**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**  
Caryn Jackson  
Wayne-Hamtramck-DHHS  
12140 Joseph Campau  
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**Interested Parties**

BSC4  
M Holden  
B Cabanaw  
N Denson-Sogbaka

**Via First Class Mail:**

**Authorized Hearing Rep.**

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

**Petitioner**

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