



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]
[REDACTED], MI [REDACTED]

Date Mailed: May 7, 2024
MOAHR Docket No.: 24-003378
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 April 29, 2024. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Arica Miller, Eligibility Specialist, and Corlette Brown, Hearings Facilitator.

It is noted that although the Department agreed to submit the Interview Guide to the undersigned which was to be admitted as Exhibit B as Petitioner had no objection, the Department did not submit the Interview Guide as requested¹ and thus, the only exhibit entered in this case was Exhibit A, consisting of 34 pages.

ISSUE

Did the Department properly process Petitioner's Food Assistance Program (FAP) application, dated [REDACTED] [REDACTED] 2023, and properly deny her FAP benefits effective [REDACTED] [REDACTED] 2023?

Did the Department properly deny Petitioner FAP benefits for the period of January 23, 2024 through January 31, 2024 based on Petitioner's [REDACTED] [REDACTED] 2024 FAP application?

¹ The Department submitted Case Comments containing a summary of Petitioner's interview. Petitioner did not stipulate to entry of a summary and therefore, the Case Comments were not entered as an exhibit.

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] [REDACTED] 2023², Petitioner applied for FAP benefits for herself and her two minor children (December application). Petitioner listed a phone number, ending 7585, as her home and cell phone numbers. Petitioner disclosed working for Little Scholars (Employer 1) an average of 35 hours per week for \$ [REDACTED] per hour. (Exhibit A, pp. 4 – 11).
2. On January 9, 2024, the Department sent Petitioner an appointment notice stating the Department would call her on Thursday, January 18, 2024 for a telephone interview. The notice stated the Department would call Petitioner at phone number, ending 7585, and that if the phone number was incorrect to contact the Department as soon as possible. (Exhibit A, p. 13).
3. On January 12, 2024, Petitioner called the Department and provided an updated phone number, ending 4189³. (Exhibit A, p. 1).
4. On January 16, 2024, the Department sent Petitioner a Notice of Case Action (NOCA) denying Petitioner's application for FAP for failure to complete the interview requirement. (Exhibit A, pp. 22 – 23).
5. On January 18, 2024, the Department called Petitioner at her updated phone number, ending 4189, for her FAP initial interview, but was unable to reach Petitioner.
6. On January 19, 2024, Petitioner returned the call to the Department. The Department did not interview Petitioner because it had already denied her FAP application. (Exhibit A, p. 1).
7. On January 23, 2024, Petitioner applied for FAP benefits again (January application). (Exhibit A, pp. 24 – 31).
8. On January 29, 2024, Petitioner submitted a request for hearing, to dispute denial of her December application, to the Department. The Department did not process Petitioner's request for hearing appropriately and no hearing was scheduled.

² Petitioner's application was submitted on Wednesday, [REDACTED] [REDACTED] 2023 at 6:39 pm. Applications and other documents submitted to the Department after regular business hours and on holidays are deemed to be received on the next business day. BAM 110 (October 2023), p. 6.

³ The hearing summary prepared by the Department mistakenly listed the updated phone number, reported by Petitioner on January 12, 2024, to end in 4289. The Department testified during the hearing that 4289 was a typo and that its records reflect that Petitioner provided an updated phone number ending in 4189 on January 12, 2024.

9. On February 6, 2024, the Department issued Petitioner a NOCA denying her for FAP benefits for the period of January 23, 2024 through January 31, 2024, and approving her for FAP benefits for a group of three, in the amount of \$316 per month, effective February 1, 2024 ongoing. (Exhibit A, pp. 32 – 34).
10. On March 26, 2024, the Department received Petitioner's second request for hearing regarding denial of her December application.

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 two recent FAP applications to the Department. The first was on [REDACTED] [REDACTED] 2023 (December application), which was denied for failure to complete an interview; and the second was on [REDACTED] [REDACTED] 2024 (January application), which was denied for prorated benefits for January 2024 and approved for benefits February 2024 ongoing. Petitioner requested a hearing to dispute the denial of her December FAP application and, to the extent necessary, denial of prorated FAP benefits for January 2024.

December Application

When an individual applies for FAP benefits, the Department must conduct a telephone interview before approving benefits. BAM 115 (January 2023) p. 20. The purpose of the interview is to explain program requirements and gather information to determine the group's eligibility. BAM 115, p. 17. Interviews must be scheduled promptly to meet standards of promptness. BAM 115, p. 22. In FAP cases, the interview must be held by the 20th day after the application date to allow the client at least 10 days to provide verifications by the 30th day. BAM 115, p. 22.

In this case, Petitioner applied for FAP benefits on [REDACTED] [REDACTED] 2023 for herself and her two minor children. The Department sent Petitioner an appointment notice on January 9, 2024, advising that Petitioner was scheduled for an interview on January 18, 2024 and that the Department would call Petitioner at phone number ending 7585.

(Exhibit A, p. 13). The notice further advised Petitioner that if the phone number was incorrect, to contact the Department as soon as possible. (Exhibit A, p. 13).

Petitioner called the Department on January 12, 2024, and provided a new telephone number, ending in 4189. (Exhibit A, p. 1; see also Footnote 2). The Department attempted to reach Petitioner for her interview on January 18, 2024, at number ending in 4189, but was unsuccessful. Petitioner returned the Department's telephone call on January 19, 2024, but was told her FAP application had already been denied. (Exhibit A, p. 1). The Department had issued a NOCA on January 16, 2024, a date 2 days prior to Petitioner's initially scheduled interview, denying her application due to failure to complete her interview. (Exhibit A, pp. 22 – 23). The Department did not act in accordance with Department policy when it failed to timely schedule Petitioner's interview and when it denied Petitioner's FAP application prior to the date of the initially scheduled interview.

Notwithstanding the Department's premature denial of Petitioner's FAP application, for purposes of FAP, if a client misses an interview appointment, the Department is to send a Notice of Missed Appointment (DHS-254) advising a client that it is his or her responsibility to request another interview date and, if the client calls to reschedule, the interview is to be scheduled no later than the 30th day after application, if possible. BAM 115, p. 23 (emphasis added). The Department did not offer evidence or testimony that a Notice of Missed Appointment was sent to Petitioner. However, Petitioner's action, in promptly contacting the Department to report a change in her phone number and promptly returning the Department's missed telephone call on January 19, 2024, established that she attempted to, and was able and willing to, participate in the initial interview. Because Petitioner requested to reschedule her interview and the Department declined to do so, as required by BAM 115, it did not act in accordance with Department policy. Additionally, the Department it did not act in accordance with Department policy when it failed to send a Notice of Missed Appointment to Petitioner.

While the NOCA the Department sent to Petitioner on January 16, 2024 stated that her December FAP application was denied due to Petitioner's failure to complete her interview, in preparation for hearing, the Department asserted the position that its denial was appropriate because Petitioner's income exceeded all income limits at the time of her December application. (Exhibit A, pp. 1, 22 – 23). In support of its position, the Department testified that it obtained a Work Number report from Equifax⁴ and used the following pay dates from each of Petitioner's employers to determine that Petitioner was ineligible for FAP at the time of her December application:

From Employer 1:

Pay date:

December 15, 2023

December 29, 2023

⁴ The Work Number is a third-party database which receives income information directly from an applicant's employer and is accessed using Petitioner's Social Security Number.

and, from a second employer, DM Burr (Employer 2):

Pay date:

December 15, 2023

December 29, 2023

January 12, 2024

While the Work Number provided by the Department is dated January 31, 2024, two weeks after the NOCA denying Petitioner's December application was sent to Petitioner, and the Department did not issue a NOCA denying Petitioner's December application due to excess income, the information in the report is relevant to determining if Petitioner's income exceeded the limits for FAP eligibility. Therefore, the undersigned has considered applicable policy and the evidence present to determine if the Department properly determined that Petitioner had excess income that would cause her to be ineligible for FAP benefits for December 2023.

All FAP groups which do not contain a Senior, Disabled, or Disabled Veteran (S/D/V) group member, such as Petitioner's, must have income below the Gross Income Limit and the Net Income Limit, and will be denied when the countable income exceeds the gross income limits for FAP benefits. BEM 550 (April 2023), p. 1 and BEM 213 (January 2023), p. 2. Gross income limits for FAP benefits are set by policy and based on the certified group size.

All FAP applicants and recipients are eligible for enhanced authorization for Domestic Violence Prevention Services (DVPS) if their income is less than 200% of the federal poverty level (FPL), this is also referred to as "categorically eligible". RFT 250 (October 2023), Column D. FAP applicants with income in excess of Column D are not categorically eligible. It is undisputed that Petitioner's certified group size is three. To be categorically eligible, a three-person group's income must be less than \$4,144. RFT 250.

In determining Petitioner's FAP eligibility and benefit amount, if any, 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 (October 2023), 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 bi-weekly amounts is multiplied by 2.15. BEM 505, pp. 8 – 9. However, when calculating income for purposes of FAP, income

received in the month of application is not converted to standard monthly amounts. BEM 505, p. 1.

Based on the evidence presented, Petitioner's income was solely from earned income. Using Petitioner's actual gross countable income for the month of her application, December 2023, in accordance with BEM 505, and based on the Work Number report provided by the Department, her actual gross countable income was:

From Employer 1:

<u>Pay date:</u>	<u>Gross income per Work Number:</u>
December 1, 2023	\$646.24
December 15, 2023	1,280.00
December 29, 2023	1,095.84

and, Employer 2:

<u>Pay date:</u>	<u>Gross income per Work Number:</u>
December 1, 2023	\$742.50
December 15, 2023	783.00
December 29, 2023	555.50

(Exhibit A, pp. 15 – 18). The income from these pay dates total \$ [REDACTED]. Because Petitioner's FAP group's income of \$5,103 exceeds the three-person group's gross income limit of \$4,144, the group is not eligible for FAP benefits for December 2023. RFT 250.

Even if the Department properly scheduled Petitioner's initial interview, Petitioner would still have been ineligible for FAP benefits for December 2023 based on her gross income and therefore, the Department properly determined Petitioner exceeded gross income limits for December 2023 when preparing for the hearing.

However, the interview the Department conducted as a result of Petitioner's subsequent application revealed that one of Petitioner's employment positions ended or was ending in January 2024. When a reduction in income is known to the Department, including when income is going to stop, the Department is to remove that income from the budget for future months. BEM 505, p. 8. As Petitioner reported that one of her positions would cease in January 2024, the Department would have been required to budget the final income expected to be received by Petitioner in calculating Petitioner's January 2024 budget. BEM 505, p. 8. Therefore, while Petitioner had excess income in December it is unknown if she would have had excess income for January 2024 ongoing.

In summary, while Petitioner was ineligible for FAP benefits for December 2023, she may have been eligible for FAP benefits for January 2024 ongoing and therefore, the Department failed to act in accordance with policy when it failed to timely schedule

⁵ All cents are dropped from total amounts.

Petitioner's interview, failed to issue a Notice of Missed Appointment, and when it failed to reschedule her interview when she timely requested to do so, pursuant to BAM 115.

January Application

The Department testified that, in determining Petitioner's FAP eligibility for her [REDACTED] 2024 application, it used Petitioner's December 29, 2023, January 12, 2024, and January 26, 2024 pay dates from Employer 1 and no pay dates from Employer 2. Based on its review, the Department denied Petitioner FAP benefits for January 2024 due to excess income, but approved Petitioner for FAP benefits for February 2024 ongoing based on Petitioner's separation from Employer 2. (Exhibit A, pp. 32 – 33).

However, as indicated previously herein, given that BEM 505 requires the Department to use actual income for the month of application, and considering the information available on the Work Number, and regardless of whether Petitioner maintained work with both of her employers, as of January 26, 2024, Petitioner's actual gross income for January 2024 was:

From Employer 1:

<u>Pay date:</u>	<u>Gross income per Work Number:</u>
January 12, 2024	\$933.44
January 26, 2024	1,072.64

and, Employer 2:

<u>Pay date:</u>	<u>Gross income per Work Number:</u>
January 12, 2024	\$566.50
January 26, 2024	407.00

(Exhibit A, pp. 15 – 18). The actual gross income from these pay dates total \$2,979. This amount is well below the categorical income limit of RFT 250 and does not contemplate any additional deductions Petitioner have been entitled to in determining her FAP eligibility, such as \$595.92 for an earned income deduction (BEM 550) or \$198 for a standard deduction (BEM 550). Not considering any other deductions Petitioner may be entitled to, these deductions alone would reduce Petitioner's countable income to approximately \$[REDACTED] in net income.

This calculation also does not contemplate the effect of any income prospected by the Department for future months, based on any known or anticipated reduction in Petitioner's income. That said, the gross income from these pay dates, standardized as required by BEM 505 for future months, and not adjusted for loss of income from either employer, only totals \$1,601; however, the budget summary provided by the Department with the February 6, 2024 NOCA reflects that it budgeted \$[REDACTED] in gross earned income for Petitioner. (Exhibit A, pp. 32 – 34). Therefore, the Department did not act in accordance with policy when it calculated Petitioner's income for January 2024 as it relates to her January application.

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, as a whole, the Department did not act in accordance with policy when it denied Petitioner's December FAP application and refused to reschedule her interview. The Department also did not act in accordance with policy when it calculated Petitioner's income for purposes of denying her FAP benefits for January 2024 due to excess income.

DECISION AND ORDER

Accordingly, the Department's decisions are **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. Reprocess Petitioner's FAP application received by the Department on [REDACTED] 2023;
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 December 14, 2023 ongoing;
3. If not otherwise resolved based on reprocessing the [REDACTED] 2023 FAP application, reprocess Petitioner's FAP application received by the Department on January 23, 2024;
4. 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 January 23, 2024 ongoing; and
5. Notify Petitioner of its decision in writing.



Caralyce M. Lassner
Administrative Law Judge

CML/nr

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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