



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: May 17, 2024
MOAHR Docket No.: 24-004216
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Julia Norton

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 telephone hearing was held on May 15, 2024. Petitioner was present and self-represented. The Department of Health and Human Services (Department) was represented by Suzan Ferrante, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner's eligibility for Food Assistance Program (FAP) benefits?

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 size of five.
2. On March 21, 2024, the Department sent Petitioner a Verification Checklist (VCL) for proof of income with a due date of April 1, 2024 after it became aware that Petitioner had returned to work at the [REDACTED] (Employer). Exhibit A, pp. 17-19.
3. On April 8, 2024, the Department used the Equifax Work Number to obtain more income information, which provided a pay history for Petitioner's employment at Employer. Exhibit A, pp. 24-29.
4. On April 8, 2024, the Department sent a Notice of Case Action (NOCA) to Petitioner indicating that her FAP benefit amount had been decreased to zero,

effective May 1, 2024 to December 31, 2024, due to excess net income. Exhibit A, pp. 38-43.

5. On April 9, 2024, the Department received Petitioner's paystub from check date March 29, 2024. Exhibit A, p.21.
6. On April 17, 2024, the Department received Petitioner's request for hearing disputing the reduction in her monthly FAP benefits. Exhibit A, pp. 5-6.

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.

In this case, Petitioner disputes the Department's calculation of her monthly income and reduction of her FAP benefits.

The Department must consider a FAP group's countable income to determine the FAP benefit rate. 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. BEM 505 (October 2023), p. 1. For the purposes of FAP, the Department must convert income that is received more often than monthly into a standard monthly amount. BEM 505, pp. 8-9. To standardize income received weekly, the Department multiplies the average weekly income by 4.3. BEM 505, p. 9. To standardize income received biweekly, the Department multiplies the average by 2.15. *Id.*

The Department uses income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505, p. 6. For fluctuating or irregular income, the Department is required to use the past 60 or 90 days if the past 30 days is not a good indicator of future income and the fluctuations in income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. *Id.* The 60 or 90-day period can begin up to 60 or 90 days before the date the information was requested. *Id.*, p. 7. Fluctuating income is defined as income that is received on a regular schedule but that varies from check to check. *Id.*, p. 2. If there is a change in expected hours, but no change in the rate of pay, the

Department is to use the expected hours times the rate of pay to determine the amount to budget per pay period. *Id.*, p. 7. Department policy further provides that it should seek input from clients whenever possible when prospecting income. *Id.*, p.1.

Here, the Department testified that the Petitioner's countable income was based on her employment income and that it relied on the March 29, 2024 paystub submitted by Petitioner to calculate her income. Exhibit A, p. 21. The paystub showed that Petitioner received [REDACTED] in gross earnings for a bi-weekly pay period reflecting 71 hours. The Department used the single check and multiplied it by 2.15 to standardize the biweekly pay for a total of [REDACTED] in monthly income. The Department had Petitioner's Work Number pay history and testified that there was another March 2024 paycheck (March 15, 2024 for [REDACTED] reflecting 42 hours), but it was disregarded because the Department believed it was a "partial" paycheck.

Petitioner testified her hours fluctuate between 40 and 70 hours per pay period and that the March 29, 2024 paycheck does not accurately reflect her regular ongoing pay. The pay history from the Work Number supports Petitioner's testimony and shows that Petitioner's biweekly hours vary and, over the last 90 days, were at a low of 42 hours and a high of 80 hours. Exhibit A, pp. 25-26.

The evidence presented shows that Petitioner has fluctuating income but the Department based Petitioner's income calculation on one paycheck, rather than the past 30 days. Additionally, given the fluctuating pay, a 60 or 90- day pay period may be a more accurate representation of Petitioner's earnings. The Department has not shown that it properly calculated Petitioner's monthly income used to determine her monthly FAP benefit.

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 monthly FAP benefit rate.

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 from May 1, 2024 ongoing.
2. Issue supplemental payments for any FAP benefits that Petitioner was entitled to but did not receive from May 1, 2024 ongoing; and
3. Notify Petitioner of its decision in writing.



JN/ml

Julia Norton
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

Chelsea McCune

Macomb County DHHS Warren Dist.

13041 E 10 Mile

Warren, MI 48089

MDHHS-Macomb-20-Hearings@michigan.gov

Interested Parties

BSC4

M Holden

B Cabanaw

N Denson-Sogbaka

MOAHR

Via First Class Mail:

Petitioner

[REDACTED]
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[REDACTED] MI [REDACTED]