



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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[REDACTED] MI [REDACTED]

Date Mailed: May 16, 2022
MOAHR Docket No.: 22-001734
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 12, 2022. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Tom Jones, Assistant Payments Supervisor.

At the hearing, Petitioner waived her right to receiving and reviewing the 19-page hearing packet prior to the hearing and the packet was entered into evidence as MDHHS's Exhibit A. MDHHS testified they will re-send Petitioner a hearing packet for her records.

ISSUE

Did MDHHS properly close Petitioner's Food Assistance Program (FAP) case due to excess income?

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 four, consisting of her husband, her two minor children, and herself.
2. On January 20, 2022, Petitioner timely submitted a redetermination of FAP benefits to MDHHS.
3. Petitioner is employed at [REDACTED] (Employer). Petitioner submitted paystubs to MDHHS as proof of her income.

4. Petitioner's household has no other income.
5. Effective March 1, 2022, MDHHS closed Petitioner's FAP case.
6. On April 1, 2022, MDHHS notified Petitioner that her FAP case was closed due to excess income, effective March 1, 2022.
7. On April 11, 2022, MDHHS received Petitioner's verbal hearing request regarding the closure of her FAP benefits¹.

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 calculation of her earned income in determining her FAP eligibility.

The only household income in Petitioner's case is Petitioner's earned income from Employer. Petitioner timely provided to MDHHS paystubs with her redetermination (see Exhibit A, pp. 8-19). All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (July 2020), pp. 1-5. MDHHS 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 (November 2021), pp. 1-2. In prospecting income, MDHHS is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, **discarding any pay if it is unusual and does not reflect the normal, expected pay amounts.** BEM 505, pp. 5-6 (Emphasis added). Here, MDHHS concedes that they improperly calculated Petitioner's earned income because they did not discard unusual pay that Petitioner received as the result of holiday over-time. MDHHS testified that Petitioner provided March income information which is more indicative of her prospective income. MDHHS is in the process of updating Petitioner's FAP household budget but has not yet re-opened her case. Petitioner and her family have been without FAP benefits, due to MDHHS' error in

¹ Clients may verbally request hearings to dispute ongoing FAP eligibility. BAM 600 (March 2021) p. 2.

calculating her earned income since March 1, 2022. MDHHS has failed to act in accordance with policy in closing Petitioner's FAP case due to excess income.

MDHHS closed Petitioner's FAP case effective March 1, 2022. MDHHS did not notify Petitioner of the case closure until the Notice of Case Action was issued on April 1, 2022. The client must receive a written notice of all case actions affecting eligibility or amount of benefits. When a case action is completed, it must specify: the action being taken by the department, the reason(s) for the action, and the specific manual item(s) that cites the legal base for an action, or the regulation, or law itself. BAM 600, p. 1. While waiting for the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. Upon receipt of a timely hearing request, reinstate program benefits to the former level for a hearing request filed because of a negative action. BAM 600, p. 25. Here, MDHHS did not notify Petitioner regarding the closure of her FAP case until a month after the effective closure date. Petitioner was then unable to request a hearing until after her benefits stopped, contrary to policy allowing assistance to continue pending an administrative hearing and decision. Again, MDHHS has failed to act in accordance with policy regarding Petitioner's FAP case.

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 MDHHS did not act in accordance with Department policy when it closed Petitioner's FAP case due to excess income following her January redetermination.

DECISION AND ORDER

Accordingly, MDHHS' 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. Reprocess Petitioner's January 20, 2022 redetermination of FAP benefits, including recalculating her earned income consistent with this order;
2. If Petitioner is eligible for FAP benefits, issue supplements to Petitioner for any FAP benefits that she was eligible to receive but did not from March 1, 2022 ongoing;

3. Notify Petitioner of its decision in writing.

DN/mp



Danielle Nuccio
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

Email Recipients:

MDHHS-Oakland-6303-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

First-Class Mail Recipient:

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