



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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Date Mailed: October 26, 2022
MOAHR Docket No.: 22-003405
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: ELLEN MCLEMORE

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 October 24, 2022, from Detroit, Michigan. Petitioner was present with her Authorized Hearing Representative (AHR), ██████████. The Department of Health and Human Services (Department) was represented by Elaine Goodlow, Eligibility Specialist

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefit case?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. In July 2022, Petitioner completed a redetermination of her FAP benefit case.
2. Petitioner's household consisted of herself, her husband and their two minor children.
3. Petitioner's husband has income from employment (Exhibit A, pp. 20-24).
4. Petitioner's child had unearned income in the form of Supplemental Security Income (SSI) benefits (Exhibit A, pp. 25-27) and State SSI Payment (SSP) benefits in the gross amount of ██████ per month.

5. On July 18, 2022, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefit case was closing effective August 1, 2022, ongoing, as the group exceeded the net income limits (Exhibit A, pp. 7-9).
6. On August 2, 2022, Petitioner submitted a request for hearing disputing the Department's actions.

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 was an ongoing FAP recipient. In July 2022, the Department completed a review of Petitioner's FAP benefit case. The Department determined Petitioner exceeded the net income limit for her group size. A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. BEM 550 (January 2017), p.1 As Petitioner's son receives SSI, her group is designated as a categorically eligible SDV FAP group. Net income limitations are based on group size and are set forth in RFT 250. The Department presented a net income budget to establish Petitioner's group exceeded the net income limit (Exhibit A, pp. 34-37).

To be eligible for FAP, a person must be a U.S. citizen or an alien admitted to the U.S. under a specific immigration status. BEM 225 (July 2022), pp. 1-2. If a group member is identified as a U.S. citizen, the Department will not require verification unless the statement about citizenship is inconsistent, in conflict with known facts or is questionable. BEM 225, p. 1. Persons who do not meet the citizenship/immigration status, are disqualified from the group. BEM 225, p. 1.

At the hearing, the Department testified that Petitioner's spouse was disqualified from the FAP group. The Department stated that it had not received documentation establishing Petitioner's spouse's alien status. However, the Department testified that Petitioner submitted verification of her spouse's citizenship on August 12, 2022, by submitted proof that he had a U.S. passport. If Petitioner's spouse has a U.S. passport, he is a citizen. Per policy, the Department can consider a group member's statement to establish citizenship. It is unclear as to whether the Department discussed Petitioner's

spouse's alien/citizenship status with Petitioner or asked for any verification of his citizenship/alien status. Therefore, the Department failed to act in accordance with policy when it disqualified Petitioner's spouse from the FAP group.

Additionally, the Department testified that it included Petitioner's child's gross SSI income payment in the FAP budget. 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 2017), pp. 1–5. For FAP benefit cases, the Department includes the gross amount of current Social Security Administration (SSA)-issued SSI as unearned income. BEM 503 (January 2020), p. 34. Whenever an SSA-issued independent living or household of another payment is budgeted, the Department will include the monthly SSP payment amount as unearned income. BEM 503, p. 35. SSI amounts withheld to recoup overpayments due to an Intentional Program Violation (IPV) are also included in the gross amount. BEM 503, p. 33. Amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. BEM 500 (July 2017), p. 6. These amounts are excluded as income. BEM 550, p. 6.

The Department presented Petitioner's child's State Online Query (SOLQ) report showing he receives gross SSI benefits in the amount of [REDACTED] per month. However, the SOLQ shows that Petitioner's son's monthly SSI payment is reduced by \$84.10 per month, due to an overpayment. The Department should not have any amounts included as a recoupment for an overpayment. Additionally, Petitioner provided evidence that she does not receive the [REDACTED] net income amount, as reflected in the SOLQ. The SOLQ shows that in August 2022, Petitioner received [REDACTED]. However, Petitioner provided verification that in August 2022, she only received [REDACTED]. Therefore, the Department did not properly determine Petitioner's household unearned income amount.

In prospecting income, the Department 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. The Department can use income from the past 60 or 90 days for fluctuating or irregular income if: the past 30 days is not a good indicator of future income and the fluctuations of income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. BEM 505, p. 6.

The Department also included [REDACTED] in earned income in Petitioner's FAP budget. The Department provided Petitioner's husband's Work Number report showing his earnings. However, the Department could not provide testimony as to which pay dates were utilized to calculate his income. The Department stated that it potentially used income from March 2022. Additionally, Petitioner testified that her husband's income fluctuates significantly. Upon review of the work number, Petitioner's husband's income does fluctuate. As the Department could not explain how it calculated Petitioner's husband's income, and it is unlikely that more than a 30-day period was used, the Department

failed to establish that it properly calculated Petitioner's husband's income from employment.

As stated above, the Department failed to establish that it properly determined Petitioner's FAP group size, unearned income and earned income amounts. As it follows, the Department failed to properly establish that Petitioner's net income exceeded the limit for her group size. Therefore, the Department failed to establish that it acted in accordance with policy when it closed Petitioner's FAP benefit case.

DECISION AND ORDER

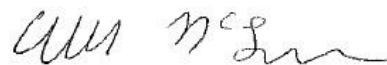
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FAP benefit case.

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 FAP eligibility as of August 1, 2022, ongoing;
2. If Petitioner is entitled to additional FAP benefits, issue supplements she is entitled to receive; and
3. Notify Petitioner of its FAP decision in writing.

EM/tm



Ellen McLemore
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
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Interested Parties
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Authorized Hearing Rep.

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