



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

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Date Mailed: June 18, 2024
MOAHR Docket No.: 24-005312
Agency No.: ██████████
Petitioner: ██████████

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 June 13, 2024. Petitioner was present and self-represented. Ramzi Saad served as Arabic interpreter for Petitioner. The Department of Health and Human Services (Department) was represented by Marcella Towns, Assistance Payment Worker.

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 is █████ years old, her spouse (Spouse) is █████ years old, and her son (Son) is █████ years old.
2. Petitioner lives with Spouse and Son.
3. Petitioner is an ongoing recipient of FAP benefits for a certified group size of two (Petitioner and Spouse) for the benefit period expiring on May 31, 2024. Exhibit A, pp. 16-18.
4. On January 30, 2024, the Department sent a wage match notice to Petitioner regarding her employment. Exhibit A, p.1.

5. Petitioner returned check stubs for her employer (Employer) covering the period January 5, 2024 to March 29, 2024. Exhibit A, pp. 7-13.
6. On March 18, 2024, the Department sent Petitioner a Notice of Case Action (NOCA) notifying her that her monthly FAP benefit would be reduced from \$535.00 to \$187.00 effective April 1, 2024 to May 31, 2024, when her FAP certification period expired. The reason for the reduction stated in the NOCA was due to Son being removed from the group as an ineligible student.
7. The Department issued Petitioner FAP benefits for March, 2024 of \$535.00; April 2024 of \$187.00 and May 2024 of \$187.00
8. On May 7, 2024, the Department received Petitioner's hearing request disputing the reduction of her FAP benefits. Exhibit A, pp. 3-6.

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 reduction of her FAP benefit amount from \$535.00 to \$187.00. The Department explained at the hearing the reason for the reduction was not because Son was an ineligible student, as the NOCA indicated, but instead due to Petitioner's increased income. Petitioner did not dispute the exclusion of Son from her FAP group, only the decrease of FAP benefits from \$535.00 to \$187.00 monthly.

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. Fluctuating income that is received more often than monthly is converted to a standard monthly amount. *Id.*, p. 8. Department policy further provides that it should seek input from clients whenever possible when prospecting income. *Id.*, p.1.

Here, Petitioner reported fluctuating income as a substitute teacher. She is paid bi-weekly, but the amounts vary from check to check. The Department averaged Petitioner's check stubs to determine her monthly income. The Department testified that in calculating the \$187.00 per month benefit amount, it used the check stubs from January 5, 2024 through March 29, 2024. However, the NOCA notifying Petitioner of the reduction in benefits was issued on March 18, 2024. Thus, the Department's testimony that it included the March 29, 2024 check stub when determining the benefit calculation conflicts with the NOCA issuance date.

Petitioner's check stubs dated prior to the NOCA issuance date include January 5, 2024 for \$[REDACTED]; January 19, 2024 for \$[REDACTED]; February 2, 2024 for \$[REDACTED]; February 16, 2024 for \$[REDACTED]; March 1, 2024 for \$[REDACTED]; and March 15, 2024 for \$[REDACTED]. Petitioner's six bi-weekly paychecks total \$[REDACTED]. The average bi-weekly paycheck amount of \$[REDACTED] (\$[REDACTED] divided by 6) when multiplied by 2.15 equals a standardized monthly earned income amount of \$[REDACTED]. If, as the Department testified, the March 29, 2024 check stub for \$[REDACTED] was included, the seven bi-weekly paychecks total \$[REDACTED]. The average bi-weekly paycheck amount of \$[REDACTED] (\$[REDACTED] divided by 7) when multiplied by 2.15, equals a standardized monthly earned income amount of \$[REDACTED].

The Department presented a FAP budget that indicated Petitioner's monthly earned income was \$[REDACTED]. However, neither of the standardized monthly earned income amounts calculated based on using six or seven bi-weekly check stubs match the monthly earned income used by the Department. The Department failed to satisfy its burden to show that it properly calculated Petitioner's FAP budget based on the check stub evidence presented for the period between April 1, 2024 and May 31, 2024.

It is noted that Petitioner's FAP certification period expires May 31, 2024, and as of the hearing date the Department was processing Petitioner's redetermination to determine the household's FAP eligibility for the certification period starting June 1, 2024. If Petitioner disputes the FAP amount calculated for the new certification period starting June 1, 2024, she is advised to request another hearing.

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 eligibility for FAP benefits.

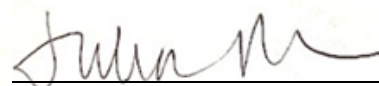
DECISION AND ORDER

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 FAP eligibility for the period of April 1, 2024 to May 31, 2024;
2. If eligible for increased benefits for April and/or May 2024, issue supplements for benefits not previously received; and
3. Notify Petitioner in writing of its decision.

JN/cc



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 :

Interested Parties

MDHHS-Wayne-19-Hearings
BSC4-HearingDecisions
N. Denson-Sogbaka
B. Cabanaw
M. Holden
MOAHR

Via-First Class Mail :

Petitioner

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