



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: September 12, 2024
MOAHR Docket No.: 24-008761
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 September 3, 2024, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Arnesia Woods, Eligibility Specialist.

ISSUE

Did the Department properly calculate the amount of Petitioner's 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. On or around [REDACTED] 2024, Petitioner submitted an application requesting FAP benefits. (Exhibit A, pp. 17-25)
 - a. On the application, Petitioner reported that she is employed with [REDACTED] an average of 25 hours per week, and that she is paid [REDACTED] every two weeks.
2. On or around June 14, 2024, Petitioner submitted a Change Report to the Department on which she reported that she is a part-time employee who works 10 months out of the year and that her last day of work was June 12, 2024. She reported that schools are out for the summer and won't start again until September 7, 2024. (Exhibit A, pp.29 – 31)

3. On or around June 26, 2024, the Department sent Petitioner a Verification Checklist (VCL) instructing her to submit among other things, proof of her wages and of her last 30 days of check stubs earning statements for her employment with [REDACTED] as well as verification of her loss of employment with [REDACTED] by July 8, 2024. (Exhibit A, pp. 35-37)
4. On an unverified date, Petitioner submitted pay stubs to the Department to verify her earnings for the pay dates of April 12, 2024, April 26, 2024, May 10, 2024, May 24, 2024, June 7, 2024, June 21, 2024, and July 5, 2024. (Exhibit A, pp. 41-43)
5. On or around July 1, 2024, Petitioner submitted a letter from the human resources office at [REDACTED] indicating that she is employed as a bus driver and is paid 10.5 months of the school year. (Exhibit A, p. 50)
 - a. The Department asserted that this was not acceptable as verification of loss of employment because it did not indicate an end date of Petitioner's employment or a last pay date.
6. On or around July 5, 2024, Petitioner requested a hearing disputing the Department's actions with respect to her FAP benefits. (Exhibit A, pp. 3-5)
7. On or around July 12, 2024, the Department sent Petitioner a Verification of Employment form that she was instructed to have completed by her employer and returned to the Department by July 22, 2024. (Exhibit A, pp. 51-53)
8. Petitioner was approved for FAP benefits in the amount of \$129 for the month of July 2024, and \$106 for the month of August 2024.

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 requested a hearing on July 5, 2024, disputing the Department's actions with respect to her FAP case. A review of Petitioner's hearing request indicates that she applied for FAP benefits 60 days ago and her application is still pending after conducting an interview and submitting all required documentations. It was established

that since the date of Petitioner's request for hearing, the application was processed and Petitioner was approved for FAP benefits in the amount of \$129 for July 2024. Additionally, Petitioner was notified through a Notice of Case Action dated July 12, 2024, that she was approved for FAP benefits of \$106 for August 2024. After some discussion, Petitioner clarified that at issue is the Department's calculation of her FAP benefits in the amount of \$129 for the month of July 2024. It is noted that the Department had taken subsequent actions on Petitioner's FAP case after her hearing request, which included additional request for verifications and a potential Front End Eligibility Investigation. Petitioner was advised that the subsequent actions will not be addressed with this Hearing Decision, as they occurred after her July 5, 2024 request for hearing. The hearing proceeded with respect to the calculation of Petitioner's FAP benefits for the month of July 2024.

The Department presented a FAP EDG Net Income Results Budget for the July 2024 benefit period which was thoroughly reviewed to determine if the Department properly calculated Petitioner's FAP benefits. (Exhibit A, pp. 63-65).

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 (April 2022), pp. 1-5. An employee's wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (January 2024), pp. 6-7. 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), pp. 1-2. 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. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received weekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (January 2024), pp. 6-7. This conversion takes into account fluctuations due to the number of scheduled pays in a month. However, Department policy notes an exception and states:

Do not convert income for the month income starts or stops if a full month's income is not expected in that month. Use actual income received or income expected to be received in these months. Example 1: On 10/18 the client reports being laid off from her job. She will receive one paycheck in November. Stop budgeting the standard monthly amount for November. Process a change to budget only one week of wages for

November. Process a change for December to remove the income entirely unless the client reports another change.

BEM 505, pp. 8-9. Additionally, for stopping income, the Department will budget the final income expected to be received in the benefit month by using the best available information to determine the amount of the last check expected based on information from the source and the client and the Department will remove the stop income from the budget for future months. BEM 505, pp.8 –9. Furthermore, income decreases that result in a benefit increase must be effective no later than the first allotment issued 10 days after the date the change was reported, provided necessary verification was returned by the due date. Do not process a change for a month earlier than the month the change occurred. A supplement may be necessary in some cases. BEM 505, pp. 11-12.

According to the FAP Net Income Results Budget, the Department determined that Petitioner's household had gross earned income of [REDACTED] which it testified consisted of her biweekly earnings from employment as a bus driver with [REDACTED]. Although the paystubs submitted for review were illegible, the Department identified three pay dates/amounts relied upon, specifically, [REDACTED] paid on June 7, 2024, [REDACTED] paid on June 21, 2024, and [REDACTED] paid on July 5, 2024. While the Department identified the three pay stubs, the Department representative testified that in prospectively budgeting Petitioner's income for the month of July 2024, it actually only considered the [REDACTED] paid on June 21, 2021, and [REDACTED] paid on July 5, 2024. However, upon review, and consideration of the above referenced prospective budgeting policy, when the amounts identified are prospectively budgeted, the total does not equal [REDACTED] as reflected on the budget presented for review.

Additionally, Petitioner submitted a change report advising the Department that her employment as a bus driver ended for the summer on or around June 12, 2024. The Department acknowledged that Petitioner received her last paycheck from her employment as a bus driver with [REDACTED] on July 5, 2024. Therefore, in light of the above referenced policies with respect to stopping income, the Department should not have continued to include Petitioner's June 2024 income in prospectively budgeting her earnings for July 2024, as this income was not expected to continue. There was some testimony during the hearing that Petitioner obtained new temporary employment for summer school at some point in July 2024; however, the date of Petitioner's first pay and the amount was unknown. Thus, in recalculating Petitioner's FAP benefits for July 2024, the Department should rely on the actual earnings received in July 2024.

It is noted that Petitioner confirmed the amounts relied upon by the Department with respect to unearned income from child support, housing expenses, and utilities, which upon review, were calculated in accordance with Department policy. Thus, the only dispute appeared to be with respect to the calculation of income.

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 because of the errors

identified above with respect to the calculation of Petitioner's earned income, the Department did not act in accordance with Department policy when it determined that Petitioner was eligible for \$129 in FAP benefits for the month of July 2024.

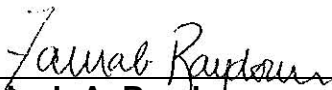
DECISION AND ORDER

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. Recalculate Petitioner's FAP budget for July 1, 2024, ongoing;
2. Issue FAP supplements to Petitioner for any benefits she was eligible to receive but did not, if any, from July 1, 2024, ongoing, in accordance with Department policy; and
3. Notify Petitioner in writing of its decision.

ZB/ml



Zainab A. Baydoun
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

Dora Allen

Wayne-Gratiot/Seven-DHHS

4733 Conner Suite G 7 Lappin

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Interested Parties

BSC4

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Via First Class Mail:

Petitioner

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