



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

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Date Mailed: November 22, 2024
MOAHR Docket No.: 24-011785
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner

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 hearing was held by telephone on November 14, 2024. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Dequindre Williamson, Assistance Payments Supervisor.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefits effective November 1, 2024 ongoing?

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 of six, which included himself, his wife (Spouse), and their four minor children.
2. On May 6, 2024, Petitioner provided the Department with a 2023 Schedule C for his ownership of ██████████ ██████████ (TT), which reported Petitioner was the proprietor and TT's tax identification number. The Schedule C reported \$██████████ in gross income, \$190,178 in total expenses, \$3,408 in expenses for business use of his home, and a net profit of \$13,604. (Exhibit A, pp. 11 – 12).
3. TT is a Limited Liability Company (LLC).

4. On May 6, 2024, Petitioner also provided the Department with a 2023 Schedule C for Spouse, which reported Spouse was self-employed as a consultant, and \$[REDACTED] in gross income and \$0 expenses. (Exhibit A, p. 13).
5. On September 17, 2024, the Department received a FAP redetermination application from Petitioner. Petitioner reported that the household's income was from his and Spouse's respective self-employment. (Exhibit A, pp. 7 – 8).
6. On September 24, 2024, the Department sent Petitioner a Notice of Case Action (NOCA) that approved Petitioner for FAP benefits of \$1,174 per month for a six-person FAP group effective October 1, 2024 ongoing. The NOCA included a budget summary that reflected the household had monthly income of \$0 earned income and \$2,150 self-employment income. (Exhibit A, pp. 24 – 25).
7. On September 24, 2024, the Department also sent Petitioner a Verification Checklist (VCL) for Medicaid (MA) that requested Petitioner provide verification of income for the past 30 days by October 4, 2024. (Exhibit A, pp. 9 – 10).
8. On October 2, 2024, the Department received income and expense statements from Petitioner and Spouse.
9. On October 9, 2024, the Department sent Petitioner a NOCA that closed Petitioner's FAP case effective November 1, 2024 ongoing, due to excess gross income. The NOCA stated that the group's monthly income was \$[REDACTED] (Exhibit A, pp. 14 – 15).
10. On October 9, 2024, the Department also sent Petitioner a second VCL for MA that requested Petitioner provide verification of his employment income from TT, and verification of Spouse's self-employment income, by October 21, 2024. (Exhibit B, pp. 5 – 6).
11. On October 14, 2024, the Department received Petitioner's verbal request for hearing.
12. On October 21, 2024, the Department sent Petitioner a NOCA that approved Petitioner for FAP benefits of \$151 per month for a six-person FAP group effective November 1, 2024 ongoing. The NOCA included a budget summary that reflected the household had monthly income of \$[REDACTED] earned income and \$[REDACTED] self-employment income. (Exhibit A, pp. 19 – 21).
13. On November 8, 2024, the Department sent Petitioner a third VCL, for both FAP and MA, with a Quick Note, that requested Petitioner's and Spouse's income information and verification, among other verifications. (Exhibit B, pp. 1 – 4).
14. On November 15, 2024, the Department received a 2024 year to date profit and loss statement for TT. (Exhibit B, pp. 7 – 10).

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.

Petitioner initially requested a hearing to dispute the closure of his FAP case effective November 1, 2024. At the hearing, and based on subsequent actions by the Department, Petitioner disputed the Department's calculation of the FAP group's household income and FAP benefit amount for November 1, 2024 ongoing. The Department initially closed Petitioner's FAP case due to excess gross income, based on monthly income of monthly income was \$[REDACTED] but prior to the hearing, approved Petitioner for \$151 per month effective November 1, 2024 ongoing, based on earned income of \$[REDACTED] and self-employment income of \$[REDACTED]

Individuals who run their own businesses are self-employed; however, for purposes of Department programs, individuals who organize their businesses as S-Corporations (S-Corp) and LLCs are not self-employed. BEM 502 (June 2024), p. 1. The income a client receives from an S-Corp or LLC are wages, even if the client is the owner, and may be verified with, among other things, a Verification of Employment (VOE) or paystubs. BEM 501 (January 2024), pp. 5, 11 – 12. Wages paid to an individual from an S-Corp or LLC are earned income. BEM 503 (October 2024), p. 32. Gross countable earned income is reduced by a 20% earned income deduction. BEM 550 (October 2024), p. 1. Dividend or interest income received from an S-Corp or LLC as a shareholder or partner, is unearned income, and is to be budgeted over the period intended to cover. BEM 503, pp. 24, 32.

The income of a self-employed individual whose business is not organized as an S-Corp or LLC, and is determined to work for themselves, is counted as self-employment income. BEM 502, pp. 1 – 2. The amount of self-employment income before any deductions is called total proceeds and countable income from self-employment is the amount of total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. Allowable expenses are the higher of: a) 50% of the total proceeds, or b) actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3.

In this case, Petitioner is the owner of TT, which is a Limited Liability Company (LLC)¹, and testified that TT is Petitioner's sole source of employment and that the company has a number of expenses including wages paid to employees. Spouse is self-employed as a consultant.

The Department testified that it originally closed Petitioner's case because it counted \$██████ per month in earned income for Petitioner, and despite its subsequent actions, the basis for that amount was not made clear during the hearing. The Department further testified that Petitioner's Schedule C did not indicate TT was an LLC, and prior to the hearing, it recalculated Petitioner's income by counting TT's gross income from Petitioner's 2023 Schedule C, minus all expenses except depreciation, and determined the remainder to be Petitioner's income; and that it updated Spouse's income to the monthly average of her 2023 Schedule C total gross income. (Exhibit A, pp. 1, 11 – 13). Lastly, the Department testified that the correct income should have been the gross income, though it was unclear the type of gross income the Department was referring to, i.e. earned income, unearned income, or self-employment income. (Exhibit A, p. 1).

While it was unclear why, how, or when the Department considered Petitioner to have \$██████ in monthly earned income, and the Department took subsequent action prior to the hearing, there was no evidence that the Department obtained a VOE or paystubs from Petitioner prior to reaching its conclusion that Petitioner had earned income and issuing the October 9, 2024 NOCA closing Petitioner's case due to excess gross income.

Additionally, notwithstanding that Petitioner's Schedule C reflected a business name and separate tax identification number, which suggested that Petitioner's business is an S-Corp or LLC, and that Petitioner's business is now known to be an LLC, a Schedule C alone is not an acceptable verification source for verifying self-employment income for purposes of FAP. BEM 502, p. 7. Therefore, the Department did not act in accordance with policy when it calculated Petitioner's income as self-employment income based on his 2023 Schedule C. There was also no evidence that the Department reduced Spouse's self-employment income by 50%, when that amount is higher than the \$0 of actual expenses Spouse claimed on her Schedule C (BEM 502, p. 3), or a clear explanation of how the Department determined the FAP group's self-employment income amount of \$██████ on the October 21, 2024 NOCA. Therefore, the Department failed to establish that it acted in accordance with policy when it determined that Petitioner was self-employed, calculated Petitioner's income as self-employment, and when it calculated Spouse's income from self-employment.

¹ State of Michigan, Department of Licensing and Regulatory Affairs (LARA), Corporations Division. <https://cofs.lara.state.mi.us/CorpWeb/CorpSearch/CorpSummary.aspx?token=nBxILn58HwVtv4JMRDwTm1cWblopjnzIgg3FCQzRMH7Z0mRAdeXC1FzQ2X0Q9B7Bmv9XqGGW7Uf4iFhfUrVEE9BnET/k3kJUlpEsK7cd8OJU+orHREwWELEdmhnLcXuUmZP+zq/RNeL1dWMXWw9D9pg5cFh1WIVhmyDK2Mscmm9uP1Big6/3vBaH8e+szpoPhtkrrW4rP0knO+0YlvkFhOWyvTwoVleUwF1MVRITokRf8FKT+baIH/xcdYeJKLlhZEiHCcV6MqSiTIU7j1n45DP5cxlBx4BH6cq5aZ6FYpHMkpdrTnEqELpefRbUdhi8J8BogDec/3ow6iBCuM8KZdSAC7SJMRLh>. (Last accessed November 20, 2024).

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 and Spouse's countable income and determined Petitioner's eligibility for FAP for November 1, 2024 ongoing.

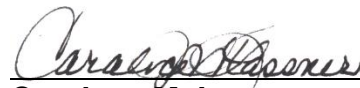
DECISION AND ORDER

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 for November 1, 2024 ongoing;
2. If Petitioner is eligible for any supplemental FAP benefits, issue supplemental payments to Petitioner for any FAP benefits he was eligible to receive but did not for November 1, 2024 ongoing; and
3. Notify Petitioner of its decision in writing.

CML/nr



Caralyce M. Lassner
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
Tracey Jones
Oakland County Southfield District III
25620 W. 8 Mile Rd
Southfield, MI 48033
MDHHS-Oakland-6303-Hearings@michigan.gov

Interested Parties
BSC4
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N. Denson-Sogbaka
B. Cabanaw
MOAHR

Via-First Class Mail :

Petitioner
[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]