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GOVERNOR

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

Date Mailed: November 26, 2024
MOAHR Docket No.: 24-011953
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 20, 2024. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Georgetta Cornelius, Eligibility Specialist, and Morgan Hafler, Assistance Payments Supervisor.

ISSUE

Did the Department properly determine Petitioner's eligibility for 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. On ██████████ 2024, the Department received an application for FAP from Petitioner for himself, Spouse, and their four children, including █ year old daughter ██████████ (TB) and three minors. Petitioner reported that his income from employment was the only income in the household and that no one was enrolled in college or a vocational school. (Exhibit A, pp. 6 – 15).
2. On September 5, 2024, the Department interviewed Petitioner. During the interview, Petitioner reported income for himself and TB, and that TB was a student at Wayne State University (College). (Exhibit A, p. 1).

3. On September 5, 2024, the Department sent Petitioner a Notice of Case Action (NOCA) that approved Petitioner for FAP benefits for a five-person FAP group. TB was excluded as an ineligible student.
4. On October 8, 2024, the Department sent Petitioner a NOCA that approved Petitioner for FAP benefits of \$282 per month for a six-person FAP group that included TB. (Exhibit A, pp. 31 – 32).
5. On October 17, 2024, Petitioner submitted a request for hearing to the Department to dispute the amount of his FAP benefit and inclusion of TB's income in the Department's calculation of the FAP group's income. (Exhibit A, pp. 3 – 4).

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 requested a hearing to dispute the amount of his FAP benefit and the Department's inclusion of TB's income when it calculated the FAP group's income.

Each time the Department evaluates eligibility of a person and household for FAP benefits, it must determine who must be included in the FAP group. BEM 212 (March 2024), p. 1. People who live together and purchase and prepare food together must be included in the same group. BEM 212, p. 1. Additionally, parents and their children under the age of 22 who reside together must be included in the same group, except that any child under 22 who is in student status and does not meet the criteria set forth in BEM 245 is an ineligible student and a non-group member. BEM 212, pp. 1, 10. Non-group members and their income are excluded from the FAP group and receipt of FAP benefits. BEM 212, p. 9.

For purposes of FAP, a person is in student status if they are age 18 – 49 and enrolled half-time or more in a) a vocational, trade, business, or technical school that usually requires a high school diploma or GED, or b) at college or university that offers degree programs regardless of whether a diploma is required. In order for a person in student status to be eligible for FAP benefits, they must meet at least one of the criteria listed in the student status policy, such as maintaining employment for an average of 20 hours

per week, receiving financial assistance from the Perkins Loan or similar program, or be working in a work study program, among other things. BEM 245 (July 2023), pp. 3 – 6.

In this case, Petitioner applied for FAP benefits for a group of six that included himself, Spouse, and their four children, including TB and three minors. (Exhibit A, p. 7). The evidence and Petitioner's testimony established that TB is 19 years old, lives in the home, and is a full-time student at College. (Exhibit A, pp. 1, 8). The Department testified that initially it did not include TB in the FAP group because, despite being under 22 years of age, it determined she was an ineligible student. (Exhibit A, p. 24). However, the Department testified that when a case review was completed on Petitioner's case, it was determined that additional information was needed regarding TB's employment. BAM 301 (January 2022), p. 1. On October 8, 2024, the Department received paystubs for TB and determined that she was an eligible student based on the average number of hours she works per week. Review of the two bi-weekly paystubs provided for TB confirmed that the Department properly determined that she works an average of 20 hours per week. (Exhibit A, pp. 21 – 22). Therefore, the Department properly determined TB is an eligible student and a mandatory member of the FAP group.

Once the Department determined TB was a mandatory member of the FAP group, it was obligated to recalculate the group's countable earned and unearned income. BEM 500 (April 2022), pp. 1 – 5. Countable income is gross income that is not specifically excluded. BEM 500, p. 3. Gross income is the amount of income before any deductions such as taxes or garnishments to repay a debt or meet a legal obligation. BEM 500, p. 4. To calculate future benefit months, the Department prospectively determines the group's income to determine the best estimate of the group's expected income. BEM 505 (October 2023), pp. 1, 6. Prospective income is income not yet received, but expected, and is based on the past 30 days when that income appears to accurately reflect what is expected to be received in the benefit month, disregarding any pay that is unusual, such as unusual overtime or lack of work. BEM 505, pp. 1, 6. For the purposes of FAP, the Department must convert income that is received more often than monthly into a standard monthly amount. The average of weekly amounts is multiplied by 4.3 and of bi-weekly amounts is multiplied by 2.15. BEM 505, pp. 8 – 9.

A review of the Work Number report provided through Equifax reflects that the Department used Petitioner's weekly paychecks from August 9, 2024 through August 30, 2024 to determine his countable gross earnings on September 5, 2024. Based on those paychecks, the Department properly determined Petitioner had standard monthly gross earnings of \$ [REDACTED] on September 5, 2024. (Exhibit A, pp. 19, 24).

During the hearing, the Department testified that when it calculated TB's income on October 8, 2024, it converted TB's bi-weekly paystubs into a standard monthly income and included it in the FAP group's budget. (Exhibit A, pp. 1, 21 – 22). Because TB is a mandatory member of the FAP group, the Department properly included her earned income when it determined the FAP group's eligibility and benefit amount.

The Department also testified that it recalculated Petitioner's income and used his paychecks dated August 9, 2024 and August 16, 2024 only, disregarded his August 2, 2024, August 23, 2024 and August 30, 2024 paychecks as unusual, and testified that Petitioner reported working an average of 40 hours per week. (Exhibit A, pp. 1, 19). The Department's recalculation increased the amount it budgeted for Petitioner's income and it did not clearly explain why it changed its calculation of Petitioner's earnings on October 8, 2024. A review of Petitioner's hourly rate, as reported on the Work Number, confirmed that the two paystubs the Department testified it used reflected Petitioner worked 44.8 and 43.9 hours in each of those weeks, while the August 23, 2024 and August 30, 2024 paystubs reflected he worked 33.7 and 32.5 hours respectively. (Exhibit A, p. 19). The Department did not clearly explain why Petitioner's prospected earnings, based on an average of over 44 hours per week, were more accurate or consistent with Petitioner's report of working an average of 40 hours per week, than the average of all four paystubs Petitioner had received in the last 30 days. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's 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 the Department acted in accordance with Department policy when it determined TB is a mandatory member of the FAP group and included her income when determining the FAP group's eligibility, but failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's income for the FAP benefit period effective 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 effective 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, from 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 :

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