

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:



MAHS Reg. No.: 15-021685
Issue No.: 3001
Agency Case No.: [REDACTED]
Hearing Date: January 13, 2016
County: Macomb (20)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 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 January 13, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator.

ISSUE

The issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) eligibility.

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 FAP benefit recipient.
2. Petitioner was part of a household that included her adult son.
3. On an unspecified date in 2014 or earlier, MDHHS disqualified Petitioner's adult son from receiving FAP benefits due to multiple drug-related felony disqualifications.
4. Petitioner's FAP group did not include a senior, disabled, or disabled veteran member.

5. On November 13, 2015, MDHHS determined Petitioner to be eligible for [REDACTED] in FAP benefits, effective December 2015, in part, based on zero medical expenses and a group size of one.
6. On November 19, 2015, Petitioner requested a hearing to dispute the amount of her FAP eligibility while conceding her FAP group size should be one.

CONCLUSIONS OF LAW

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute the amount of her FAP eligibility for December 2015. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 1-5) dated November 13, 2015. The notice included a budget summary of all FAP eligibility amounts factored by MDHHS. During the hearing, Petitioner was asked about each FAP eligibility factor.

Petitioner testified that one of her disputes was the FAP group size factored by MDHHS. It was not disputed that MDHHS calculated Petitioner's FAP eligibility based on a FAP group which only including Petitioner. MDHHS disqualified Petitioner's son due to drug-related felonies.

[For FAP benefits,] people convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (October 2015), p. 1. An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. *Id.*

MDHHS was unprepared to present evidence to support the disqualification of Petitioner's son. Given presented evidence, it could not be found that MDHHS properly disqualified Petitioner's son from FAP eligibility.

Generally, MDHHS has the burden of proof in administrative hearings. Also, clients are generally given leniency in disputing FAP eligibility by not having to specify which FAP eligibility factors are disputed. The present case merits an exception to these general rules.

The FAP eligibility disqualification of Petitioner's son was not a recent action by MDHHS. Petitioner testified the disqualification occurred at least one year before the

eligibility month in dispute. Thus, Petitioner's sudden raising of the dispute would be surprising to MDHHS unless the issue was raised within the hearing request.

Petitioner's hearing request stated "I understand I only qualify for household of one as far as EBT goes which the amount of should be approx. [REDACTED]" (see Exhibit 1, p. 6). The statement is reasonably interpreted as a concession that Petitioner is not disputing the FAP group size. In light of Petitioner's hearing request statement, MDHHS could not reasonably be expected to present evidence supporting the disqualification. It should also be noted that Petitioner did not attempt to present any documentary or persuasive testimonial evidence to rebut the disqualification.

It is found that Petitioner did not request a hearing to dispute the disqualification of her son's FAP eligibility. Accordingly, Petitioner is not entitled to administrative review of the issue. Petitioner was advised she is entitled to administrative review of the issue, though she would be expected to specifically raise the dispute within her hearing request.

The analysis will proceed to consider all other FAP eligibility factors. BEM 556 directs MDHHS to factor a FAP group's countable income and allowable expenses.

MDHHS budgeted [REDACTED] for Petitioner's FAP group's unearned income. Petitioner conceded the amount to be accurate.

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2014), p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses: child care, excess shelter (housing and utilities) up to a capped amount and court-ordered child support and arrearages paid to non-household members. For groups containing SDV members, DHHS also considers the medical expenses for the SDV group member(s) and an uncapped excess shelter expense. Petitioner conceded her household did not include a SDV member.

Verified medical expenses for SDV groups, child support, and day care expenses are subtracted from a client's monthly countable income. Petitioner testimony conceded she had no day care or child support expenses. Petitioner alleged she had medical expenses, however, such expenses are not countable for non-SDV groups.

Petitioner's FAP benefit group receives a standard deduction of [REDACTED] RFT 255 (October 2015), p. 1. The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction is subtracted from the countable monthly income to calculate the group's adjusted gross income. Petitioner's FAP group's adjusted gross income is found to be [REDACTED].

Petitioner conceded her housing expenses were [REDACTED], the same amount budgeted by MDHHS. MDHHS credited Petitioner with the maximum utility standard of [REDACTED].

Petitioner's total shelter expenses are found to be [REDACTED] (rounding to nearest dollar).

MDHHS only credits FAP benefit groups with what is called an "excess shelter" expense. This expense is calculated by subtracting half of Petitioner's adjusted gross income from Petitioner's total shelter obligation. This amount is calculated to be [REDACTED], however, MDHHS caps the excess shelter expense for non-SDV groups. As a non-SDV group, Petitioner's maximum excess shelter deduction is [REDACTED] (see RFT 255).

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. Petitioner's FAP benefit group's net income is found to be [REDACTED]. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner's group size and net income Petitioner's proper FAP benefit issuance is found to be [REDACTED], the same amount calculated by MDHHS.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner did not request a hearing to dispute FAP group size. It is further found that MDHHS properly determined Petitioner's FAP eligibility to be [REDACTED], effective December 2015. The actions taken by MDHHS are **AFFIRMED**.



Christian Gardocki

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

Date Signed: **1/20/2016**

Date Mailed: **1/20/2016**

CG/tm

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a

rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

