



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: April 26, 2018  
MAHS Docket No.: 18-002395  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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; 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 April 16, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], supervisor.

**ISSUES**

1. The first issue is whether Petitioner is entitled to an administrative remedy for a hearing request submitted more than 90 days after MDHHS issued written notice of a negative action.
2. The second issue is whether MDHHS properly denied Petitioner's Food Assistance Program (FAP) application dated November 13, 2017.
3. The third issue is whether MDHHS properly denied Petitioner's FAP application dated January 8, 2018.

**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 near February 2017, MDHHS terminated Petitioner's FAP and Medical Assistance (MA) eligibility.

2. On an unspecified date in or near February 2017, MDHHS mailed Petitioner written notice of FAP and MA termination.
3. On an unspecified date in August 2017, Petitioner applied for FAP benefits.
4. On an unspecified date no later than September 30, 2017, MDHHS denied Petitioner's application from August 2017.
5. At all relevant times, Petitioner was a member of a 4-person FAP group which included her spouse.
6. On November 3, 2017, Petitioner applied for FAP benefits.
7. Petitioner's spouse received the following weekly gross employment income: \$ [REDACTED] on November 3, 2017, and \$ [REDACTED] on November 9, 2017. Spouse's subsequent gross employment pays were \$ [REDACTED] on November 17, 2017, \$ [REDACTED] on November 22, 2017, \$ [REDACTED] on December 1, 2017, \$ [REDACTED] on December 8, 2017, \$ [REDACTED] on December 15, 2017, \$ [REDACTED] on December 22, 2017, and \$ [REDACTED] on December 29, 2017.
8. On November 13, 2017, Petitioner submitted to MDHHS a document listing a housing obligation of \$ [REDACTED]. The document did not include her property address.
9. Petitioner did not submit proof of her spouse's child support payments.
10. Petitioner did not submit to MDHHS non-overdue medical expenses exceeding \$ [REDACTED].
11. On November 29, 2017, MDHHS denied Petitioner's FAP application due to excess income, in part, based on earned income of \$ [REDACTED], a housing obligation of \$ [REDACTED], \$ [REDACTED] in child support expenses, and \$ [REDACTED] medical expenses.
12. On January 8, 2018, Petitioner applied for FAP benefits.
13. On January 9, 2018, MDHHS mailed Petitioner a Verification Checklist (VCL) requesting Petitioner's spouse's checking account statement. The due date to return verification was January 19, 2018.
14. On January 18, 2018, MDHHS mailed Petitioner a VCL requesting Petitioner's vendor card balance. The due date to return verification was January 29, 2018.
15. By February 6, 2018, Petitioner had not submitted proof of her spouse's checking account or her vendor card balance.

16. On February 6, 2018, MDHHS denied Petitioner's application dated January 8, 2018, in part, due to Petitioner's failure due to verify assets.
17. On March 1, 2018, Petitioner requested a hearing to dispute the denials of her application from August 2017, and those dated November 13, 2017, and January 8, 2018. Petitioner also disputed terminations of FAP and MA eligibility from approximately February 2017.

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

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

#### **Application related to a notice of denial from no later than September 2017, termination of Medical Assistance and/or termination of Food Assistance Program eligibility from February 2017**

Petitioner requested a hearing to dispute a termination of FAP and MA benefits from approximately February 2017. Petitioner also requested a hearing to dispute a FAP application submitted to MDHHS in August 2017 (per Petitioner's testimony). MDHHS did not present a corresponding notice of case action justifying any of the case actions. Instead, MDHHS contended that Petitioner's hearing request to dispute all three actions was untimely.

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (January 2018), p. 2. The request must be received in the local office within the 90 days... *Id.*

Petitioner initially testified that she never received notice of FAP or MA terminations from February 2017. Petitioner later testified that she received notice, but she disagreed with the reasons for FAP and MA termination. Petitioner's testimony sufficiently verified

receiving written notice approximately one year before she requested a hearing. Concerning an application from August 2017, Petitioner testimony conceded receiving corresponding written notice no later than September 2017.

It is not known precisely how long Petitioner took to request a hearing to dispute FAP and MA eligibility from February 2017 and the denial of an August 2017 application. The evidence established that Petitioner's hearing request dated March 1, 2018, was submitted to MDHHS several weeks longer than 90 days from each written notice mailing. Thus, Petitioner's hearing request will be dismissed concerning all three disputes that were untimely.

### **Petitioner's application dated November 13, 2017**

Petitioner disputed the denial of a FAP application dated November 13, 2017. MDHHS presented a Notice of Case Action (Exhibit A, pp. 73-76) dated November 29, 2017. The notice informed Petitioner that her application was denied due to excess income. MDHHS presented a FAP budget for November 2017 (Exhibit A, pp. 70-72) reflecting all figures utilized by MDHHS in denying Petitioner's application. During the hearing, all relevant budget factors were discussed with Petitioner. BEM 556 outlines the factors and calculations required to determine FAP eligibility.

MDHHS factored employment income of \$ [REDACTED] for Petitioner's spouse. Petitioner repeatedly testified that MDHHS over-estimated her spouse's income.

[MDHHS is to] [u]se past income to prospect income for the future unless changes are expected. Use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month... The 30-day period used can begin up to 30 days before the interview date or the date the information was requested. BEM 505 (October 2017) p. 6.

For starting income, use the best available information to prospect income for the benefit month. This may be based on expected work hours times the rate of pay. Or if payments from the new source have been received, use them in the budget for future months if they accurately reflect future income. BEM 505 (October 2017), p. 8.

MDHHS presented copies of Petitioner's spouse's pay checks (Exhibit A, pp. 67-68). The submitted checks reflected gross pays of \$ [REDACTED] on November 3, 2017, and \$ [REDACTED] on November 9, 2017.

The evidence established that Petitioner's spouse's income was erratic. The pays submitted by Petitioner reflected a time when Petitioner's spouse returned to his job after a period of lay-off.

Petitioner contended that MDHHS should have used the monthly average of her husband's year-to-date income to project his income. Petitioner's contention had

multiple problems. First, MDHHS policy does not specifically allow for such an income calculation. Secondly, year-to-date income is not necessarily a reliable projection of income because what Petitioner's spouse received in January 2017 does not necessarily affect what he will receive several months later. Thirdly, Petitioner testified that her spouse has work stoppages resulting in stopped employment; in such cases, Petitioner can report changes in income to MDHHS after FAP is established (or in this case, reapply after spouse's income stops).

MDHHS interpreted Petitioner's spouse's two weekly pays as reflective of future income. The interpretation ended up correct based on documentation of future pays (see Exhibit A, pp. 135-137). Petitioner's spouse received ongoing income for the remainder of 2017 that resembled the two pays MDHHS used to project Petitioner's spouse's income.

Given the evidence, MDHHS' calculation was reasonable. Multiplying Petitioner's spouse's weekly gross income by 4.3 results in a monthly income of \$ [REDACTED] the same amount of income factored by MDHHS. It is found that MDHHS properly budgeted employment income as \$ [REDACTED]

MDHHS credits clients with a 20% employment income deduction. Application of the deduction results in countable employment income of \$ [REDACTED] (dropping cents).

Petitioner agreed that her unearned income was \$ [REDACTED]. Adding the amount to countable earned income results in a running income total of \$ [REDACTED]

[MDHHS] uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2015), 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 (see *Id.*). For groups containing SDV members, MDHHS also considers the medical expenses above \$ [REDACTED] for each SDV group member(s) and an uncapped excess shelter expense. It was not disputed that Petitioner was the only SDV member of the group.

Verified countable medical expenses for SDV groups exceeding \$ [REDACTED] child support, and day care expenses are subtracted from a client's monthly countable income. Petitioner disputed child support and medical expenses.

MDHHS testimony indicated that Petitioner's spouse's "consolidated inquiry" (Exhibit A, p. 43) did not reveal a child support obligation. Petitioner initially testified that her spouse paid \$ [REDACTED]/month in child support. Petitioner later acknowledged that she never verified the expense despite receiving a Verification Checklist. BEM 554 requires verification of child support expenses. MDHHS properly did not budget child support expenses without verification of the expenses.

MDHHS provided a list of medical expenses submitted by Petitioner (Exhibit A, p. 55). The most recent expense incurred was \$ [REDACTED] on May 4, 2017. This amount is under the \$ [REDACTED]/month deductible. The next most recent expense was \$ [REDACTED] on April 29, 2016.

Allow only the non-reimbursable portion of a medical expense. The medical bill cannot be overdue. The medical bill is not overdue if one of the following conditions exists

- Currently incurred (for example, in the same month, ongoing, etc.).
- Currently billed (client is receiving the bill for the first time for a medical expense provided earlier and the bill is not overdue).
- Client made a payment arrangement before the medical bill became overdue. BEM 554 (August 2017) pp. 11-12.

Petitioner's medical expenses from 2016 and earlier were presumably overdue. Petitioner presented no evidence otherwise. Without evidence of medical expenses exceeding \$ [REDACTED] that were not overdue, MDHHS properly did not credit Petitioner for payment of medical expenses.

Petitioner's FAP benefit group size justifies a standard deduction of \$ [REDACTED] (see RFT 255). 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]

MDHHS factored Petitioner's monthly housing costs as \$ [REDACTED]. Petitioner contended her housing expense was \$ [REDACTED] and that she submitted sufficient documentation (Exhibit A, p. 54).

Listed acceptable verification sources include rental receipts, money order copies, and/or cancelled checks (see BEM 554). The receipt must contain minimum information to identify the expense, the amount of the expense, the expense address if verifying shelter, the provider of the service and the name of the person paying the expense. *Id.*, p. 15.

Petitioner's verification of her rent did not include a property address. MDHHS policy supports rejecting Petitioner's submission as acceptable verification due to the absence of address. MDHHS testimony also credibly indicated that Petitioner and her landlord were called in an attempt to assist Petitioner, but acceptable documentation was not returned. Thus, MDHHS properly did not credit Petitioner with \$ [REDACTED] in monthly rent.

MDHHS credited Petitioner with a heating utility (h/u) standard of \$ [REDACTED]/month. The utility standard incorporates all utilities and is the maximum credit available (see RFT 255). Petitioner's total shelter expenses (housing + utilities) are found to be \$ [REDACTED]

MDHHS only credits FAP benefit groups with an "excess shelter" expense. The excess shelter expense is calculated by subtracting half of Petitioner's adjusted gross income

from Petitioner's total shelter obligation. Petitioner's excess shelter amount is found to be \$■

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 \$■. 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 for a full month of benefits is \$■. Thus, Petitioner's FAP application dated November 13, 2017, was properly denied.

### **Petitioner's application dated January 8, 2018**

Petitioner lastly disputed the denial of a FAP application dated January 8, 2018. MDHHS presented a Notice of Case Action (Exhibit A, pp. 158-161) dated February 6, 2018. The notice informed Petitioner that the reasons for application denial were excess income, failure to verify a checking account, and failure to verify a vendor prepaid debit card. Any one of the reasons, if established, would justify a denial of FAP benefits.

[For FAP benefits,] [d]etermine asset eligibility prospectively using the asset group's assets from the benefit month. BEM 400 (January 2018) p. 3. [For FAP benefits,] [t]he value of the types of assets described above is the amount of the:

- Money/currency.
- Uncashed check, draft or warrant.
- Money in the account or on deposit.
- Money held by others.
- Money held by nursing facilities for residents.
- Money in a vendor pre-paid debit card (for example, Direct Express, ReliaCard, etc.). *Id.*, p. 17.

[For all programs, MDHHS is to tell...] the client what verification is required, how to obtain it, and the due date... BAM 130 (April 2017) p. 3. Use the DHS-3503, Verification Checklist (VCL), to request verification. *Id.* Allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. *Id.*, p. 7. [For FAP benefits,] [s]end a negative action notice when:

- The client indicates refusal to provide a verification, or
- The time period given has elapsed and the client has not made a reasonable effort to provide it. [bold lettering removed] *Id.*

MDHHS presented a Verification Checklist (Exhibit A, pp. 151-153) dated January 9, 2018. Items requested included proof of Petitioner's spouse's checking account. The due date was January 19, 2018. MDHHS extended the due date following a call from Petitioner and sent a second VCL.

MDHHS presented a Verification Checklist (Exhibit A, pp. 154-155) dated January 18, 2018. Requested items included Petitioner's vendor card balance. The due date was January 29, 2018.

Petitioner testimony conceded she did not submit verification of her vendor card statement or her spouse's checking account. Petitioner's failure to submit properly requested required verification justified denial of her FAP application due to a failure to verify assets.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner failed to timely request a hearing concerning a termination of FAP eligibility from approximately February 2017, a termination of MA eligibility from approximately February 2017, and denial of FAP benefits from an application dated in or near August 2017. Petitioner's hearing request is **PARTIALLY DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's FAP applications dated November 13, 2017, and January 8, 2018. The actions taken by MDHHS are **AFFIRMED**.

CG/



**Christian Gardocki**

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

**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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

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



**DHHS**

[REDACTED]  
[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]