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GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: September 25, 2020  
MOAHR Docket No.: 20-005335  
Agency No.: ██████████  
Petitioner: ██████████

**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 hearing was held on September 17, 2020, via telephone conference. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Valarie Foley, hearings facilitator.

### **ISSUE**

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

### **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 ██████████ 2020, Petitioner applied for FAP benefits. Petitioner reported a household which included her daughters ██████████ (hereinafter, "Child1") and ██████████ (hereinafter, "Child 2").
2. As of July 2020, Petitioner's spouse was also a household member.
3. As of July 2020, Child1 was a full-time college student who was ██████████ years old who intended to register for the fall semester.
4. As of July 2020, neither Petitioner, her spouse, Child1, or Child2 were ██████████, disabled, or disabled veterans.
5. In July 2020, Petitioner received gross biweekly income pays of \$██████████ on July 10, 2020, and \$██████████ on July 24, 2020

6. In July 2020, Petitioner's spouse received gross monthly income of \$[REDACTED].
7. As of July 2020, Petitioner had no dependent care or child support expenses.
8. As of July 2020, Petitioner was responsible for \$925 in housing expenses and a heating bill.
9. On August 13, 2020, MDHHS denied Petitioner's application for FAP benefits due to excess net income.
10. On August 13, 2020, Petitioner requested a hearing to dispute the denial of her application for FAP benefits.

### **CONCLUSIONS OF LAW**

The Food Assistance Program [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 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 denial of an application requesting FAP benefits.<sup>1</sup> A Benefit Notice dated August 13, 2020, stated that Petitioner was ineligible for FAP benefits due to excess net income. Exhibit A, pp. 40-43.

BEM 556 outlines the factors and calculations required to determine a client's net income. FAP net income factors group size, countable monthly income, and relevant monthly expenses. MDHHS provided budget documents which listed all relevant factors and calculations. Exhibit A, pp. 37-39. During the hearing, all budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of three persons: Petitioner, her spouse, and Child 2. Petitioner raised disputes over the exclusion of Child1 and the inclusion of her spouse.

Concerning her spouse's eligibility, Petitioner's application dated [REDACTED] 2020, notably did not report her spouse as living with her. Exhibit A, pp. 7-13. MDHHS contended that Petitioner's spouse was properly included as a group member after Petitioner stated during an interview on August 7, 2020, that her husband lived with her, though he sometimes leaves the home. Also, MDHHS relied on a residential address for Petitioner's spouse for an active Medicaid case which matched Petitioner's address.

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<sup>1</sup> Petitioner verbally requested a hearing on August 13, 2020. Exhibit A, p. 3. Clients may verbally request hearings to dispute FAP eligibility. BAM 600 (January 2020) p. 2. Petitioner additionally submitted a hearing request to MDHHS on August 14, 2020. Exhibit A, pp. 4-5.

During the hearing, Petitioner acknowledged that her spouse lived with her in July 2020, though he is currently out of her household. As the present case concerns Petitioner's eligibility from July 2020, Petitioner's circumstances from then, not currently, dictate FAP eligibility. As Petitioner's spouse was a household member with Petitioner in July 2020, he is a mandatory group member and properly included in Petitioner's FAP group.<sup>2</sup>

MDHHS did not include Child1 as a group member, though Petitioner reported her as in the household. MDHHS contended that Child1 was properly excluded due to her student status.

A person in student status must meet certain criteria in order to be eligible for assistance. A person is in student status if he or she is:

- Age ■ through ■; and
- Enrolled half-time or more in either a:
  - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.
  - Regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245 (January 2018), pp. 3-4.

In order for a person in student status to be eligible for FAP benefits, he or she must meet one of the following criteria:

- Receiving Family Independence Program benefits
- Enrolled in an institution of higher education as a result of participation in:
  - A JTPA program.
  - A program under section 236 of the Trade Readjustment Act of 1974 (U. S. C. 2296).
  - Another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year (i.e. work study).
- Providing more than half of the physical care of a group member under the age of six.
- Providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate childcare is not available to:
  - Enable the person to attend class and work at least 20 hours per week.

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<sup>2</sup> Spouses who live together must be in the same group. BEM 212 (July 2019) p. 1.

- Participate in a state or federally-financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12. This includes a person who does not live with his or her spouse, who has parental control over a child who does not live with his or her natural, adoptive or stepparent.  
*Id.*, pp. 3-5.

Petitioner acknowledged that Child1 was enrolled full-time in a college curriculum and that she was 18-49 years old. During the hearing, all possible student status exceptions were discussed with Petitioner. Petitioner did not allege any exceptions were applicable to Child1. Petitioner contended that student status should not have applied because Child1 was on a summer break as of the date of FAP application.

The person remains in student status while attending classes regularly. *Id.*, p. 5. Student status continues during official school vacations and periods of extended illness. *Id.* Student status does not continue if the student is suspended or does not intend to register for the next school term (excluding summer term). *Id.*

Based on the above policy, MDHHS intended to continue student status for students who do not attend school in the summer, as long there was an intent to register in the next semester. Petitioner's testimony acknowledged that Child1 intended to register for school in the fall.

Given the evidence, MDHHS properly placed Child1 in student status. Thus, MDHHS properly excluded Child1 as a group member. Thus, Petitioner's FAP is three persons: Petitioner, her spouse, and Child2.

For FAP benefits, MDHHS generally counts gross wages.<sup>3</sup> BEM 501 (January 2020) p. 7. For non-child support income, MDHHS uses past income to project a FAP group's income. BEM 505 (October 2017) p. 5. Biweekly income is converted to a monthly amount by multiplying the average income by 2.15. *Id.*, p. 8.

MDHHS calculated an earned income for Petitioner's group of \$[REDACTED]. Exhibit A, p. 14. MDHHS could not explain how the amount was calculated but provided income documents for Petitioner and her spouse. Petitioner received gross biweekly income pays of \$[REDACTED] on July 10, 2020, and \$[REDACTED] on July 24, 2020. Exhibit A, p. 18. Multiplying Petitioner's average biweekly employment income by 2.15 results in a countable monthly employment income of \$[REDACTED] (dropping cents).

Petitioner's spouse received monthly employment income. Income documents listed one pay to Petitioner's spouse in July 2020 for \$[REDACTED]. Exhibit A, pp. 47-48.

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<sup>3</sup> Exceptions to using gross wages include the following: earned income tax credits, flexible benefits, striker earnings, student disregards, and census worker earnings. BEM 501 (July 2017), p. 7. None of these exceptions apply to the present case.

Adding Petitioner's and her spouse's income results in \$ [REDACTED] in monthly employment income (dropping cents). For purposes of this decision, the lower monthly group income of \$ [REDACTED] calculated by MDHHS will be accepted as correct. Applying a 20% credit for timely reported employment income results in a running net 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: childcare, 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 \$35 for each SDV group member(s) and an uncapped excess shelter expense. Countable expenses are subtracted from a client's monthly countable income.

In determining Petitioner's FAP eligibility, MDHHS factored that Petitioner had no child support or dependent care, or medical expenses. Petitioner's testimony acknowledged having no dependent care or child support expenses. Petitioner would not be eligible for medical expense credits because none of her group members were SDV.

Petitioner's FAP benefit group size justifies a standard deduction of \$161 (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 and countable expenses are subtracted from the countable monthly income to calculate the group's adjusted gross income. Subtracting the standard deduction and countable expenses from Petitioner's income results in an adjusted gross income of \$ [REDACTED].

MDHHS credited Petitioner with monthly housing expenses of \$925. Petitioner's testimony acknowledged that the amount was correct. MDHHS credited Petitioner with a standard heating/utility (h/u) credit of \$518. RFT 255 (October 2019) p. 1. Generally, the h/u credit covers all utility expenses and is the maximum credit available.<sup>4</sup> Adding Petitioner's housing and utility credits results in a total shelter obligation (housing + utilities) of \$1,443.

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 \$168.

The FAP benefit group's net income is determined by subtracting the excess shelter expense from the group's adjusted gross income; doing so results in \$ [REDACTED] in net income for Petitioner's group. 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 July 2020 is \$0; the same issuance amount was calculated by MDHHS. Thus, MDHHS properly denied Petitioner's application requesting FAP benefits.

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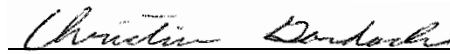
<sup>4</sup> MDHHS allows additional credits for "actual utility expenses". Such expenses are only allowed for utility installation charges, water well installation and maintenance, and septic installation and maintenance. BEM 554 (October 2019) p. 15. There was no evidence of applicable exceptions.

Petitioner testified that her circumstances have changed since MDHHS denied her application. As discussed during the hearing, Petitioner can always reapply for an updated FAP determination.

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's application for FAP benefits dated [REDACTED] 2020, due to excess net income. The actions taken by MDHHS are **AFFIRMED**.

CG/cc



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**Christian Gardocki**

Administrative Law Judge  
for Robert Gordon, 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 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 Email:**

MDHHS-Wayne-19-Hearings  
BSC4 Hearing Decisions  
M. Holden  
D. Sweeney  
MOAHR

**Petitioner – Via First-Class Mail:**

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