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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: August 21, 2019
MOAHR Docket No.: 19-007274
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, an in-person hearing was held on August 15, 2019, from ██████████ Michigan Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Cathy Burr, supervisor, and Latrice Bailey, specialist.

ISSUE

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

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 June 12, 2019, MDHHS determined that Petitioner was eligible to receive \$23/month in FAP benefits beginning July 2019.
2. As of July 2019, Petitioner's household included herself and her minor child.
3. As of July 2019, Petitioner was under 60 years old.
4. As of July 2019, Petitioner and her child each received \$1,008/month in survivorship benefits from the Social Security Administration (SSA).
5. As of July 2019, Petitioner had the following expenses: \$0 child support, \$0 dependent care, \$777.78 in housing, and an obligation for heating/cooling.

6. As of July 2019, neither Petitioner nor her daughter was determined to be disabled by a federal, state, or local agency.
7. On July 2, 2019, Petitioner requested a hearing to dispute FAP eligibility beginning July 2019.
8. On July 12, 2019, MDHHS determined Petitioner to be eligible for \$15 in FAP benefits beginning August 2019.

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).

Petitioner requested a hearing on July 2, 2019, to dispute a determination of FAP benefits. As of Petitioner's hearing request date, MDHHS most recently determined that Petitioner was eligible for \$23 in FAP beginning July 2019. Shortly after Petitioner's hearing request, MDHHS reduced Petitioner's eligibility to \$15. The analysis will evaluate the later and less favorable determination of FAP eligibility for August 2019.

The evidence indicated that Petitioner received a significantly higher amount of FAP benefits before July 2019. MDHHS explained that Petitioner's previous FAP eligibility improperly factored medical expenses which Petitioner and/or her child either no longer incurred and/or are not entitled to receive. Current FAP eligibility is calculated independently of past FAP eligibility. Thus, Petitioner's past FAP issuances will not be factored in determining whether MDHHS properly calculated Petitioner's ongoing eligibility.

MDHHS provided budget pages (Exhibit A, pp. 6-9) listing all factors used to determine Petitioner's FAP eligibility for August 2019. During the hearing, all budget factors were discussed with Petitioner. BEM 556 outlines the factors and calculations required to determine FAP eligibility.

As of the disputed benefit month, Petitioner lived with her minor child. Petitioner's testimony acknowledged that MDHHS properly factored a group size of two persons.

It was not disputed that Petitioner and her child each received \$1,008 in Retirement, Survivors and Disability Insurance (RSDI). For purposes of FAP, Petitioner's groups countable income totals \$2,016.

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 additionally considers the medical expenses above \$35 for each SDV group member(s) and an uncapped excess shelter expense.

It was disputed whether Petitioner and her child were members of an SDV group. Petitioner presented dozens of documents (Exhibit 1, pp. 1-83; Exhibit 2, pp. 1-7; Exhibit 3, pp. 1-13; and Exhibit 4, pp. 1-11) which included some verification of medical expenses incurred by Petitioner and her child. Petitioner contended that MDHHS should have factored medical expenses in determining her FAP eligibility. MDHHS contended neither Petitioner nor her child were SDV members which justifies not factoring medical expenses.

MDHHS defines a senior as someone 60 years or older; Petitioner acknowledged that neither she nor her daughter were seniors (over 60 years of age) or disabled veterans. BEM 550 (January 2017), p. 1. Petitioner did claim that she and her daughter were disabled. For purposes of FAP benefits, a person who receives one of the following is considered “disabled”:

- A federal, state or local public disability retirement pension and the disability is considered permanent under the Social Security Act.
- Medicaid program which requires a disability determination by Disability Determination Service or Social Security Administration.
- Railroad Retirement and is eligible for Medicare or meets the Social Security disability criteria.
- A person who receives or has been certified and awaiting their initial payment for one of the following:
 - Social Security disability or blindness benefits.
 - Supplemental Security Income (SSI), based on disability or blindness, even if based on presumptive eligibility *Id.*, pp. 2-3.

Petitioner and her daughter each received income from SSA, but Petitioner’s testimony acknowledged that she and her daughter received survivorship benefits and not disability-related benefits. Petitioner’s testimony was consistent with documentation from SSA which listed no disability onset date for Petitioner or her daughter. Exhibit A, pp. 10-15.¹

Petitioner claimed that she and her daughter were disabled under the Americans with Disabilities Act (hereinafter, “ADA”); and therefore, their medical expenses should be factored by MDHHS. Petitioner did not cite any applicable provision of the ADA to support her claim. Generally, the ADA prohibits discrimination of individuals with disabilities in contexts of employment, public transportation, commercial facilities, public agencies, telecommunications, and miscellaneous. 42 U.S.C. § 12101. The ADA is not known to define disability in terms of allowing medical expenses to be factored in a FAP

¹ If Petitioner or her daughter received disability-related benefits from SSA, a disability onset would be stated.

budget. Further, federal regulations for FAP benefits are consistent with MDHHS' definition of disability rather than Petitioner's. 7 CFR 273.2(f)(viii).

The evidence established that neither Petitioner nor her daughter were disabled. Thus, neither Petitioner nor her daughter were SDV members and not allowed medical expenses in their determination of FAP eligibility.

Petitioner provided documentation of various expenses which included gas, vehicle insurance, cable, internet, streaming services, and others. MDHHS policy does not factor any of these expenses in determining a client's FAP eligibility.

Petitioner's FAP benefit group size justifies a standard deduction of \$158 (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. Subtracting the standard deduction from Petitioner's countable income results in an adjusted gross income of \$1,858.

MDHHS factored Petitioner's housing costs to be \$777.78; Petitioner's testimony acknowledged the expense amount was accurate. MDHHS credited Petitioner with the standard heat/utility credit of \$543, which is the maximum utility credit available. Adding Petitioner's housing and utility credit results in a total shelter cost of \$1,321.


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 \$392.

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 \$1,466. 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 August 2019 is \$15 which is the same issuance calculated by MDHHS. It is found that MDHHS properly determined Petitioner's FAP eligibility.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner's FAP eligibility for August 2019 to be \$15. The actions taken by MDHHS are **AFFIRMED**.

CG/jaf



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 Electronic Mail
DHHS

Sarina Baber
MDHHS-Washtenaw-Hearings

BSC4
M Holden
D Sweeney

Via First Class Mail
Petitioner

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