



GRETCHEN WHITMER
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 10, 2020
MOAHR Docket No.: 20-004242
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 3-way telephone hearing was held on August 3, 2020, from Trenton, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Sabrina Hopkins, supervisor.

ISSUE

The issue is whether MDHHS properly terminated 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. On an unspecified date before May 2020, Petitioner reported to MDHHS that he paid \$350 in monthly rent and \$120 for utilities.
2. As of May 2020, Petitioner was an ongoing FAP recipient who lived alone.
3. As of May 2020, Petitioner may have paid child support to his children who lived in Africa; the support paid by Petitioner was not court-ordered.
4. As of May 2020, Petitioner received \$██████ in ongoing biweekly federal-issued unemployment benefits. Petitioner additionally received \$██████ in biweekly state-issued unemployment benefits.

5. As of May 2020, Petitioner reported to MDHHS \$0 in medical and dependent care expenses.
6. On May 14, 2020, MDHHS terminated Petitioner's FAP eligibility beginning June 2020 based on housing expenses of \$0 and a utility credit only for telephone.
7. On [REDACTED] 2020, Petitioner requested a hearing to dispute the termination of 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 a termination of FAP benefits. Exhibit A, pp. 3-4. A Notice of Case Action dated May 14, 2020, stated that Petitioner's FAP eligibility would end June 2020 due to excess net income. Exhibit A, pp. 10-11.

BEM 556 outlines the factors and calculations required to determine FAP eligibility. FAP income-eligibility is based on group size, countable monthly income, and relevant monthly expenses. The notice dated May 2, 2020, listed all relevant budget factors. *Id.* Additionally, MDHHS presented a partial FAP budget for June 2020 listing most calculations. Exhibit A, pp. 6-7. During the hearing, all relevant budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of 1.¹ Petitioner did not dispute the group size.

Documentation of Petitioner's unemployment income was presented. Exhibit A, pp. 13-14. \$[REDACTED] of Petitioner's income was issued under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Pub.L. 116-136. The United States Department of Agriculture, in a memorandum dated April 11, 2020, stated that income issued under the CARES act is countable for purposes of FAP benefits.² Petitioner received an additional \$[REDACTED] in biweekly state-issued unemployment benefits for a total of \$[REDACTED] in biweekly unemployment benefits. Exhibit A, pp. 13-14.

Petitioner testified that he received weekly net unemployment benefits of [REDACTED] (the equivalent of \$[REDACTED] in biweekly income). For FAP benefits, MDHHS counts gross

¹ See BEM 211 for FAP group size policy.

² <https://www.kark.com/wp-content/uploads/sites/85/2020/04/SNAP-COVID-QA1-April-11.pdf>

unemployment income. BEM 501 (July 2017), p. 7. Based on the evidence, MDHHS should determine FAP eligibility based on Petitioner's biweekly gross income of \$[REDACTED]. For non-child support income, MDHHS uses past income to project a FAP group's income. BEM 505 (October 2017) p. 5. Stable or fluctuating biweekly employment income is converted to a monthly amount by multiplying the average income by 2.15 *Id.*, p. 8. Multiplying Petitioner's biweekly unemployment income of \$[REDACTED] results in countable monthly unemployment income of \$[REDACTED] (dropping cents).

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.

Petitioner testified that he sends an unspecified amount of money to Africa for the purpose of child support. Petitioner contended that the child support he sends to Africa should be counted as an expense in his FAP budget.

Current and arrearage child support expenses must be paid to be allowed. BEM 554 (January 2020) p. 6. The following child support expenses are allowed:

- The amount of court-ordered child support and arrearages paid by the household members to non-household members in the benefit month.
- Court-ordered third-party payments (landlord or utility company) on behalf of a non-household member.
- Legally obligated child support paid to an individual or agency outside the household, for a child who is now a household member, provided the payments are not returned to the household. *Id.*

Petitioner testified that the child support that he pays is not court-ordered. Without a court-ordered obligation to pay child support, any support paid by Petitioner is voluntary, and therefore, not countable. Given the evidence, Petitioner is not entitled to a credit for child support expenses. Also, Petitioner did not allege having any dependent care or medical expenses.

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 factored \$0 in housing costs for Petitioner. For utilities, MDHHS credited Petitioner only with a standard telephone credit of \$30 (see RFT 255). Petitioner testified that he pays \$350 to rent a basement and that he pays an additional \$120 for his utilities. Determining whether MDHHS should have budgeted the expenses claimed by Petitioner requires determining whether Petitioner reported the expenses to MDHHS.

MDHHS is to verify shelter expenses when a change is reported. *Id.* p. 14. MDHHS is to also verify utility expenses when a change is reported. *Id.*

Petitioner testified he reported his housing and utility expenses to his previous worker. Petitioner additionally testified that he called MDHHS several times recently to check his FAP budget, but MDHHS neither answers nor returns his calls. During the hearing, MDHHS was given an opportunity to rebut Petitioner's testimony through Petitioner's reporting documents and/or case notes. A supervisor testified that she could not rebut Petitioner's testimony because she did not have access to Petitioner's case file; the supervisor also acknowledged having no first-hand knowledge of Petitioner's calls. Given the evidence, Petitioner reported to MDHHS housing expenses of \$350 and utility expenses of \$120.

For changes reported by a client affecting FAP eligibility, MDHHS has 10 days to process a change. BAM 220 (April 2020) p. 7. If verifications are required, MDHHS is to inform the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. MDHHS is to use the DHS-3503, Verification Checklist (VCL), to request verification. *Id.*

There was no evidence that MDHHS attempted to verify Petitioner's reported change in housing or utility costs. To remedy its error, MDHHS will be ordered to redetermine Petitioner's FAP eligibility following an opportunity for Petitioner to verify housing and utility obligations. The analysis will proceed based on housing costs of \$0 and utility obligations of a telephone only for the purpose of evaluating the remainder of the FAP budget.

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 \$0.

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 June 2020 is \$0; the same issuance amount was calculated by MDHHS.

Petitioner should be aware that he retains a right to request a hearing if he disputes the later reprocessing of his FAP eligibility. Though MDHHS will be ordered to reprocess Petitioner's FAP eligibility, Petitioner should also be aware that a change in FAP ineligibility

is unlikely as his income greatly exceeds the net income limit.³ In other words, factoring housing and utility expenses may not reduce Petitioner's income significantly enough to lower his net income.

³ The net income limit for a 1-person FAP group is \$1,041. RFT 250 (October 2019) p. 1. Pet

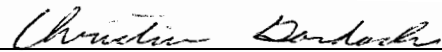
DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's FAP eligibility for June 2020. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reprocess Petitioner's FAP eligibility effective June 2020, subject to the finding that MDHHS failed to process Petitioner's reported change in housing and utility obligations; and
- (2) Issue a supplement of benefits, if any, and notice in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/tlf



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-57-Hearings
BSC4 Hearing Decisions
D. Sweeney
M. Holden
MOAHR

Petitioner – Via First-Class Mail:

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