



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: September 16, 2020
MOAHR Docket No.: 20-004869
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 hearing was held via telephone conference on September 8, 2020. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Denise Payton, manager and Brittani Davis, specialist.

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. On [REDACTED] 2020, Petitioner applied for FAP benefits. Petitioner reported a household which included her daughter.
2. As of July 2020, neither Petitioner nor her daughter were a senior, disabled, or disabled veterans.
3. As of July 2020, Petitioner was employed and received the following gross income amounts: \$732.05 on June 12, 2020; \$575.77 on June 19, 2020; \$555.89 on June 26, 2020; and \$546 on July 3, 2020.
4. As of July 2020, Petitioner's household received \$221 in unearned income.
5. As of July 2020, Petitioner had \$400 in dependent care expenses and no child support expenses.

6. As of July 2020, Petitioner was responsible for \$901.48 in housing expenses and heating and/or cooling expenses.
7. On an unspecified date, MDHHS determined that Petitioner was eligible for \$15 in FAP benefits for July 2020 and \$16 beginning August 2020.
8. On [REDACTED] 2020, Petitioner requested a hearing to dispute her FAP eligibility.

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 amount of her FAP benefits. Exhibit A, pp. 3-4. Specifically, Petitioner alleged that MDHHS failed to properly consider her dependent care and mortgage expenses. It was not disputed that MDHHS determined Petitioner to be eligible for \$15 in FAP benefits for July 2020 and \$16 beginning August 2020.^{1 2}

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. During the hearing, MDHHS provided budget pages for September 2020 listing all relevant budget factors. Exhibit B, p. 1-2. MDHHS credibly testified that Petitioner's budget for September 2020 matched her budget for August 2020. During the hearing, all budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of two.³ Petitioner's did not dispute the benefit group size.

MDHHS projected Petitioner's income from her recent weekly pays of \$732.05 on June 12, 2020; \$575.77 on June 19, 2020; \$555.89 on June 26, 2020; and \$546 on July 3, 2020. For FAP benefits, MDHHS generally counts gross wages.⁴ BEM 501 (July 2017),

¹ Petitioner's FAP eligibility was prorated for July 2020 due to applying for benefits on July 6, 2020.

² Though Petitioner was only eligible for \$16 in FAP benefits in July 2020, she should have received \$355 in monthly FAP benefits: the maximum amount of FAP benefits for her group size. Petitioner only received the maximum FAP issuance due to a temporary policy during the COVID-19 pandemic allowing FAP recipients to receive the maximum issuance amount for the group. As the policy is only temporary, an analysis of Petitioner's FAP eligibility is appropriate.

³ See BEM 212 for policies on determining group size for FAP benefits.

⁴ 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.

p. 7. 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 weekly employment income is converted to a monthly amount by multiplying the average income by 4.3. *Id.*, p. 8. Multiplying Petitioner's average weekly gross employment income by 4.3 results in a monthly income of \$2,590 (dropping cents). MDHHS determined the same employment income for Petitioner.

MDHHS allows a 20% budget credit for timely reported employment income. Applying the credit results in countable employment income of \$2,072.

Petitioner's group also had \$221 in unearned income. The unearned income was not identified, but Petitioner did not dispute that it should be counted. Adding Petitioner's group's unearned and earned countable income results in \$2,293 in countable income.

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 acknowledged having no SDV members in her group; thus, medical expenses are not allowed. MDHHS factored \$400 in monthly dependent care expenses for Petitioner and \$0 child support expenses; Petitioner's testimony acknowledged that each expense was properly budgeted. Subtracting Petitioner's expenses from Petitioner's countable income results in a running net income of \$1,893.

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 running net income results in an adjusted gross income of \$1,732.

MDHHS credited Petitioner with monthly housing expenses of \$901.48. Petitioner did not allege having additional housing expenses. Petitioner was credited 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.⁵ Adding Petitioner's housing and utility credits results in a total shelter obligation of \$1,419 (rounding to nearest dollar).

⁵ 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.

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 \$553.

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 \$1,179 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 August 2020 is \$16; the same issuance amount was calculated by MDHHS. Thus, 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 to be eligible for \$16 in FAP benefits beginning August 2020. The actions taken by MDHHS are **AFFIRMED**.

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-15-Hearings
BSC4 Hearing Decisions
D. Sweeney
M. Holden
MOAHR

Petitioner – Via First-Class Mail:

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