



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: September 18, 2020  
MOAHR Docket No.: 20-004876  
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 on September 8, 2020, via telephone conference line. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Avery Smith, manager, and Beverly Wilkinson, 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 June 29, 2020, Petitioner submitted a Redetermination form to MDHHS which reported no changes in her utility obligations.
2. As of July 2020, Petitioner was an ongoing recipient of FAP benefits and disabled.
3. As of July 2020, Petitioner received monthly unearned income of \$797.
4. As of July 2020, Petitioner reported to MDHHS a household with no other FAP group members.
5. As of July 2020, Petitioner had no dependent care, child support, or medical expenses.

6. As of July 2020, Petitioner was responsible for a water and telephone bill.
7. On July 16, 2020, MDHHS determined that Petitioner was eligible for \$16 in FAP benefits beginning August 2020.
8. On July 27, 2020, Petitioner requested a hearing to dispute FAP eligibility.
9. On or shortly after July 27, 2020, Petitioner reported to MDHHS an obligation for a heat expense.

### **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's hearing request cited special accommodations to participate in the hearing. Specifically, Petitioner stated that she uses a walker, would need a family member present, and a need to sit frequently. Presumably, Petitioner's accommodation were met as Petitioner participated via telephone and expressed no need for further accommodations.

Petitioner requested a hearing to dispute FAP eligibility. Exhibit A, pp. 4-5. Petitioner stated that MDHHS incorrectly calculated her FAP eligibility because unspecified utilities were not factored in her ongoing benefits and benefits in "previous years".

A client's request for hearing must be received in the MDHHS local office within 90 days of the date of the written notice of case action. BAM 600 (January 2020), p. 6. Generally, hearing requests must be submitted to MDHHS in writing. *Id.*, p. 2. Requests for FAP benefit hearings may be made orally. *Id.*

Concerning Petitioner's FAP eligibility from "previous years", Petitioner did not explain why she waited years to request a hearing. Petitioner did not allege that MDHHS failed to issue written notices. Petitioner did not allege any previous hearing requests which were ignored by MDHHS. These considerations support rejecting Petitioner's dispute over FAP eligibility other than the period addressed in her most recently issued FAP benefit notice. The evidence established that Petitioner's most recently issued written notice was dated July 16, 2020, concerning Petitioner's FAP eligibility for August 2020. Exhibit A, pp. 6-7.

Given the evidence, Petitioner failed to timely request a hearing to dispute FAP eligibility from July 2020 and earlier; thus, it is appropriately dismissed for these months of

eligibility. Concerning FAP eligibility beginning August 2020, Petitioner's hearing request was timely and will be evaluated on its merits.

A Notice of Case Action dated July 16, 2020, stated that Petitioner was eligible for \$16 in FAP benefits beginning August 2020. The FAP determination is based on Petitioner's net income eligibility.

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. A budget summary within the notice dated July 16, 2020, included a list of all relevant budget factors. During the hearing, all budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of one.<sup>1</sup> Petitioner's did not dispute the benefit group size.<sup>2</sup>

MDHHS factored Petitioner's unspecified monthly unearned income of \$797. Petitioner did not dispute the income factored by MDHHS.

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.

MDHHS factored no dependent care, child support, or medical expenses. Petitioner did not allege having any such 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 \$636.

MDHHS credited Petitioner with monthly housing expenses of \$0. Petitioner's testimony acknowledged having no housing expenses.

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<sup>1</sup> See BEM 212 for policies on determining group size for FAP benefits.

<sup>2</sup> Petitioner's Redetermination form received by MDHHS on June 29, 2020 reported that Petitioner lived with a guardian, with whom Petitioner buys and prepares food. MDHHS did not include Petitioner's guardian because he allegedly left Petitioner's household. Exhibit A, p. 7. Petitioner did not allege that MDHHS erred by excluding her guardian from her benefit group.

Petitioner's utilities were highly contested. MDHHS's Hearing Summary alleged that Petitioner was credited for paying a water bill. Exhibit A, p. 1. MDHHS issues a standard \$94 credit for clients responsible for water bills. RFT 255 (January 2020) p. 1. Notably, MDHHS failed to verify proof that Petitioner was credited with the expense in its hearing packet; however, during the hearing, MDHHS emailed a budget page verifying that Petitioner received a \$94 credit for August 2020. Additionally, Petitioner received a \$30 credit for telephone.

Petitioner testified that she should also be credited for a heating obligation. Whether MDHHS should have credited Petitioner hinges on when she reported the responsibility to MDHHS.

For FAP benefits, MDHHS is to act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (April 2019) p. 7. Changes which result in an increase in the household's benefits, such as a reported decrease in income, must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. *Id.*

Petitioner contended that she advised MDHHS of a heating expense obligation in July 2020 and/or earlier. If Petitioner's testimony is accepted, Petitioner may be entitled to the credit for her redetermined benefits beginning August 2020. MDHHS responded that Petitioner did not report the obligation until requesting a hearing, or later.

Notably, Petitioner's Redetermination form reported no changes in utility obligations. Exhibit A, p. 18. Petitioner contended that her response was proper because her heat obligation was unchanged. Petitioner's contention contradicts her hearing request which claimed that MDHHS wrongly denied her credit for the obligation for years. Even if Petitioner did not have a change in her heat obligation, she should have known to report it on her Redetermination form if she believed that MDHHS was not crediting her for it.<sup>3</sup>

Given the evidence, Petitioner did not report a heating obligation to MDHHS until requesting a hearing. MDHHS cannot be faulted for not processing Petitioner's previously unknown reporting. Petitioner is entitled to credits for her reporting of telephone and water totaling \$124. RFT 255 (January 2020) p. 1. With no housing costs, Petitioner's total shelter credit (housing + utilities) is also \$124.

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<sup>3</sup> Petitioner's dispute is likely moot anyway. Since at least April 2020, MDHHS issued the maximum FAP benefit amount for a client's group size to all persons eligible to receive benefits. These issuances were made subject to a temporary MDHHS policy prompted by the COVID-19 pandemic. Thus, if MDHHS processes Petitioner's reporting of a heat obligation during a time Petitioner receives the maximum FAP issuance, Petitioner would not be entitled to receive a supplement of FAP benefits. If MDHHS does not do so, Petitioner can still request a hearing to dispute MDHHS's failure to process her change.

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 \$636 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 there is no administrative jurisdiction concerning FAP eligibility from July 2020 and earlier. Concerning Petitioner's FAP eligibility from July 2020 and earlier, Petitioner's hearing request is **DISMISSED**.

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



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

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

[REDACTED]  
[REDACTED], MI [REDACTED]