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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: October 14, 2020
MOAHR Docket No.: 20-005716
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 via telephone conference on October 7, 2020. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Jacob Frankmann, 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. As of August 2020, Petitioner was an ongoing recipient of FAP benefits.
2. As of August 2020, Petitioner was a member of a 6-person household which included a disabled son and an adult daughter.
3. As of August 2020, Petitioner and her daughter each received ██████ in gross biweekly unemployment income.
4. As of August 2020, Petitioner's disabled son received ██████ in monthly Supplemental Security Income (SSI).

5. As of August 2020, Petitioner had no child support, dependent care, or medical expenses.
6. As of August 2020, Petitioner reported to MDHHS monthly housing expenses of [REDACTED]
7. As of August 2020, Petitioner was responsible for heating and/or cooling expenses.
8. On [REDACTED] 2020, Petitioner verbally requested a hearing to dispute her FAP eligibility. Petitioner also reported that her housing expenses increased by [REDACTED]
9. On September 3, 2020, MDHHS determined that Petitioner was eligible for [REDACTED] in FAP benefits beginning October 2020.

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 verbally requested a hearing.¹ MDHHS documented only that Petitioner disputed FAP eligibility. Exhibit A, pp. 4-6. Petitioner testified that part of her FAP dispute concerned a child support disqualification imposed from May 2019 through August 2020. Petitioner further testified that she mentioned this specific dispute when she verbally requested a hearing. MDHHS's testimony and hearing packet indicated that it was unprepared to address Petitioner's child support disqualification dispute. A client's dispute over a child support disqualification going back over one year is not one that can be anticipated or addressed without proper notice. In response to such a dispute, MDHHS would want to check past written notices sent to Petitioner for the purpose of raising jurisdictional limits to Petitioner's hearing request.² MDHHS would also be wise to have an Office of Child Support specialist participate in the hearing to justify the child support disqualification.

The evidence neither established whether Petitioner failed to verbally raise a dispute over a child support disqualification, or MDHHS failed to document Petitioner's dispute. Petitioner's dispute over a child support disqualification from the previous year is not

¹ Clients may verbally request hearing to dispute FAP eligibility. BAM 600 (January 2020) p. 2.

² Clients can request hearings up to 90 days from a date of written notice. *Id.*, p. 6. Thus, if Petitioner waited more than 90 days from a written notice mailing to dispute her FAP group size, there may be no jurisdiction to address the dispute.

reasonably anticipatable unless explained in writing. Due to a lack of evidence, Petitioner's verbal hearing request will not be accepted as a dispute over a child support disqualification from the previous year. The analysis will proceed based on Petitioner's dispute being one over ongoing FAP eligibility.

A Notice of Case Action dated August 27, 2020, approved Petitioner for FAP benefits of [REDACTED] beginning September 2020. After a discussion with Petitioner on August 31, 2020, MDHHS updated Petitioner's FAP eligibility on September 3, 2020 and sent written notice. Exhibit A, pp. 18-22. The updated notice informed Petitioner of FAP benefit eligibility of [REDACTED] beginning October 2020. The analysis will proceed to determine if MDHHS properly calculated Petitioner's FAP eligibility for October 2020.³

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 October 2020 listing all relevant budget factors. Exhibit A, p. 23-25. Additionally, the determination notice sent to Petitioner included a budget summary which listed 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 six.⁴ Petitioner's did not dispute the benefit group size.

MDHHS factored an unearned income of [REDACTED]. It was not disputed that Petitioner and her adult daughter each received \$[REDACTED] in gross biweekly unemployment benefits. For FAP, MDHHS is to count gross unemployment benefits. BEM 503 (January 2020) p. 37. Adding Petitioner's and her daughter's gross unemployment income results in a biweekly total of [REDACTED].

Petitioner contended that her and her daughter's biweekly income should be multiplied by two to convert it to a monthly income; MDHHS policy directs otherwise. Stable or fluctuating biweekly income is converted to a monthly amount by multiplying the average income by 2.15. *Id.*, p. 8. Multiplying Petitioner's group's unemployment average biweekly gross income by 2.15 results in a monthly unemployment income of \$1,376.

MDHHS also factored that Petitioner's disabled son received [REDACTED] in monthly SSI. For FAP, MDHHS is to count a gross SSI benefit. BEM 503 (January 2020) p. 34. Thus,

³ Normally, hearing jurisdiction should be limited to determining whether actions taken by MDHHS from before a hearing request date are proper. In the present case, MDHHS acknowledged that Petitioner's case required updating and that updates were made shortly after Petitioner requested a hearing. Presumably, the updated determination is less disputed by Petitioner as it approves her for a slightly higher benefit. As a less disputed action, the analysis is simpler in determining if the updated FAP determination was proper. Petitioner will not be harmed by limiting hearing jurisdiction to the later notice because it was not disputed that MDHHS issued the maximum amount of FAP benefits to Petitioner for her group size in September 2020.

⁴ See BEM 212 for policies on determining group size for FAP benefits.

Petitioner's son's income of [REDACTED] is countable. Adding the group's unemployment income and SSI results in a group income 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.

MDHHS counted [REDACTED] for Petitioner's medical, child support, and dependent care expenses. Petitioner testified that she agreed that she had no such expenses.

Petitioner's FAP benefit group size justifies a standard deduction of \$[REDACTED] (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 [REDACTED].

MDHHS credited Petitioner with monthly housing expenses of [REDACTED]. Petitioner contended that MDHHS should have factored expenses of [REDACTED] because she reported a [REDACTED] rent increase to MDHHS when she requested a hearing. For purposes of this decision, August 31, 2020, will be accepted as the date that Petitioner reported an increase in rent to MDHHS.

MDHHS is to act on a change reported by means other than a tape match within 10 days after becoming aware of the change. BAM 220 (April 2019) p. 7. If Petitioner reported an increase in rent to MDHHS at the same time that she requested a hearing, MDHHS cannot be faulted for not processing the change as of Petitioner's hearing request date.⁵ As of the disputed determination date of September 3, 2020, MDHHS properly determined that Petitioner's housing expenses to be \$313.

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.⁶ Adding Petitioner's housing and utility credits results in a total shelter obligation of [REDACTED].

⁵ If Petitioner contends that MDHHS has still not processed her reported change, she may separately request a hearing.

⁶ 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.

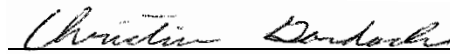
MDHHS only credits FAP benefit groups with an “excess shelter” expense. The excess shelter expense is calculated by subtracting half of Petitioner’s adjusted gross income from Petitioner’s total shelter obligation. Petitioner’s excess shelter amount is \$█

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 █ 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 October 2020 is █; 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 \$█ in FAP benefits beginning October 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-Macomb-20-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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