



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: November 6, 2020  
MOAHR Docket No.: 20-006357  
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 November 4, 2020, via telephone conference line. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Haysem Hosny, hearing coordinator.

**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. As of August 2020, Petitioner was an ongoing recipient of FAP benefits with a benefit period certified through September 2020.
2. As of August 2020, Petitioner was neither a senior, disabled, or a disabled veteran.
3. On [REDACTED] 2020, Petitioner submitted a Redetermination to MDHHS reporting that she worked at [REDACTED] (hereinafter, Employer") and received \$782.27 every two weeks.

4. In August 2020, Petitioner received the following biweekly gross pays from Employer: \$██████ on August 6 and \$██████ on August 20.
5. On September 3, 2020, MDHHS terminated Petitioner's FAP eligibility beginning October 2020 due to excess gross income.
6. On ████████, 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 "appeal my case". Exhibit A, p. 3. Petitioner's testimony clarified that she intended to dispute a termination of FAP benefits. A Notice of Case Action dated September 3, 2020, stated that Petitioner's FAP eligibility would end October 2020 due to excess gross income. Exhibit A, pp. 4-8.

To be eligible for FAP benefits, a non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550 (January 2017) p. 1. An SDV group is one with a senior (a person over the age of 60 years), disabled, or disabled veteran. *Id.* A categorically eligible group is one whose members are all Family Independence Program (FIP) and/or State Disability Assistance (SDA) and/or Supplemental Security Income recipients (SSI). It was not disputed that Petitioner's FAP group had no SDV members, FIP recipients, SSI recipients, or SDA recipients. Thus, Petitioner's FAP group is subject to gross income limits.

For FAP benefits, MDHHS counts gross unemployment income. BEM 501 (July 2017), 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 biweekly employment income is converted to a monthly amount by multiplying the average income by 2.15. *Id.*, p. 8.

As part of a redetermination of Petitioner's FAP benefits, MDHHS projected that Petitioner's gross monthly employment income was \$██████. Exhibit A, p. 23. MDHHS testified that Petitioner's income was calculated from Petitioner's two biweekly pays from Employer in August 2020: \$██████ on ████████ and \$██████ on ████████. Exhibit A, pp. 15-20. Multiplying the average of Petitioner's pays from August 2020 by 2.15 results in \$██████ in countable gross monthly income. For purposes of this decision,

it will be accepted that Petitioner's actual countable gross income for August 2020 was \$[REDACTED].

Petitioner testified that the pays relied on by MDHHS were not representative of future earnings because they included hours that she normally does not work. Petitioner's testimony implied that MDHHS should have calculated her income from more recent earnings. As of the date that MDHHS processed Petitioner's FAP eligibility, MDHHS was aware of one pay for Petitioner more current than her August 2020 pays: \$[REDACTED] on [REDACTED] 2020. Petitioner's argument for factoring a more current pay than those factored by MDHHS is less persuasive when the most current pay for Petitioner exceeded previous pays.

The monthly gross income limit for a 1-person FAP group is \$1,354. RFT 250 (October 2019) p. 1. Petitioner's countable gross income of \$[REDACTED] exceeds the gross income limit.

Also problematic for Petitioner is that she reported on her Redetermination that she received \$[REDACTED] every two weeks. Exhibit A, pp. 9-13. Even if Petitioner's reported income were accurate, multiplying the average pay by 2.15 would result in countable income of \$[REDACTED] which exceeds the gross income limit.

The evidence established that Petitioner's FAP eligibility is conditional upon passing the gross income test. The evidence further established that Petitioner's gross income exceeded the gross income limit for her group size. Thus, MDHHS properly terminated Petitioner's FAP eligibility due to excess gross income. As mentioned during the hearing, Petitioner's recourse is to reapply for FAP benefits.

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's FAP eligibility beginning October 2020. The actions taken by MDHHS are **AFFIRMED**.

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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-Macomb-36-Hearings  
M. Holden  
D. Sweeney  
BSC4  
MOAHR

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

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