



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: January 27, 2021  
MOAHR Docket No.: 20-007271  
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 January 21, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Keeona Remmer, 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 August 10, 2020, Petitioner submitted to MDHHS documentation of \$321 in medical expenses.
2. As of November 2020, Petitioner was over the age of 60 years and an ongoing FAP recipient as the only group member.
3. As of November 2020, Petitioner received ongoing biweekly gross unemployment compensation benefits (UCB) of \$724.
4. As of November 2020, Petitioner reported to MDHHS and verified mortgage expenses of \$1,031.10 and a responsibility for heating expenses.

5. As of November 2020, Petitioner had no child support or dependent care expenses.
6. On November 12, 2020, MDHHS determined that Petitioner was eligible for \$52 in FAP benefits beginning December 2020 based on a net income of \$505.
7. On November 14, 2020, MDHHS determined that Petitioner was eligible for \$49 in FAP benefits beginning January 2021 based on a net income of \$515.
8. As of November 14, 2020, MDHHS had not processed Petitioner's reported medical expenses of \$321.
9. On [REDACTED], 2020, Petitioner requested a hearing to dispute FAP eligibility for December 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 requested a hearing to dispute FAP eligibility. Exhibit A, pp. 3-4. As of Petitioner's hearing request date, MDHHS recently sent Petitioner two determination notices. A Notice of Case Action dated November 12, 2014, stated that Petitioner was eligible to receive \$52 in monthly FAP benefits beginning December 2020 based on a net income of \$505.<sup>1</sup> Exhibit A, pp. 6-7. A Notice of Case Action dated November 14, 2020, stated that Petitioner was eligible to receive \$49 in monthly FAP benefits beginning January 2020 based on a net income of \$515. Exhibit A, pp. 8-9. The analysis will consider both determinations starting with Petitioner's eligibility for December 2020.

BEM 556 outlines the factors and calculations required to determine a client's net income for FAP benefits. Net income factors group size, countable monthly income, and relevant monthly expenses. The notices sent to Petitioner included a summary listing all factored income and expenses. During the hearing, all budget factors were discussed with Petitioner.

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<sup>1</sup> Though Petitioner was only eligible for \$52 in FAP benefits beginning December 2020, MDHHS issued the maximum amount of FAP benefits for a group size since March 2020 due to a temporary policy during the COVID-19 pandemic. Because the policy is only temporary, Petitioner is entitled to dispute her ongoing FAP eligibility.

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

MDHHS calculated an unearned income of \$1,556. It was not disputed that Petitioner received biweekly gross UCB of \$724. Petitioner testified that her net income is less and that multiplying her biweekly income by 2 results in a smaller amount than \$1,556. For FAP, MDHHS is to count gross unemployment benefits. BEM 503 (January 2020) p. 37. 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 average biweekly gross employment income by 2.15 results in a proper monthly unearned income of \$1,556.

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.<sup>3</sup> *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. It was not disputed that Petitioner was a senior.

Petitioner testimony acknowledged having no child support or dependent care expenses. Petitioner testified that she submitted medical expenses to MDHHS in August 2020. During the hearing, MDHHS checked Petitioner's electronic case file and acknowledged that Petitioner submitted a medical bill of \$321 on August 10, 2020.<sup>4</sup> MDHHS presented no evidence that Petitioner's medical expenses were factored in Petitioner's FAP eligibility.

Given the evidence, MDHHS failed to process Petitioner's reported medical expenses. Thus, MDHHS will be ordered to process Petitioner's medical expenses. For purposes only of evaluating the remaining budget calculations, it will be accepted that Petitioner had zero medical expenses.

Petitioner contended that MDHHS should have also factored vehicle expenses, such as insurance, into her FAP eligibility. Car insurance is not a relevant expense for FAP benefits.

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<sup>2</sup> See BEM 212 for policies on determining group size for FAP benefits.

<sup>3</sup> BEM 550 (October 2020) p. 1 defines seniors as a person over 60 years of age for purposes of FAP eligibility.

<sup>4</sup> Petitioner submitted additional medical expenses to MDHHS after she requested a hearing. Because the expenses were submitted after her hearing request, they are not relevant to determining whether MDHHS properly processed Petitioner's FAP eligibility as of the hearing request date.

Petitioner's FAP benefit group size justifies a standard deduction of \$167 (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 \$1,389.

MDHHS credited Petitioner with monthly housing expenses of \$1,031.10; Petitioner testimony did not dispute the monthly housing expenses. MDHHS credited Petitioner with a standard heating/utility (h/u) credit of \$547. RFT 255 (October 2020) p. 1. Generally, the h/u credit covers all utility expenses and is the maximum credit available.<sup>5</sup> Adding Petitioner's housing and utility credits results in a total shelter obligation of \$1,578.10.

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 \$884 (rounding to nearest dollar).

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 \$505 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 December 2020 is \$52; the same issuance amount was calculated by MDHHS. Thus, MDHHS properly determined Petitioner's FAP eligibility other than not processing reported medical expenses.<sup>6</sup>

MDHHS also determined that Petitioner was eligible for \$49 in monthly FAP benefits beginning January 2021. The stated reason for the benefit reduction on the notice was a change in shelter expenses or deductions. Beginning January 2021, MDHHS lowered the h/u credit from \$547 to \$537. RFT 255 (January 2021) p. 1. Applying the same income and expenses other than the reduction in utility credit would result in a net income of \$515 and benefit issuance of \$49, the same amounts calculated by MDHHS. Thus, MDHHS properly determined Petitioner's FAP eligibility for January 2021.

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<sup>5</sup> 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.

<sup>6</sup> Clients have the choice of spreading medical expenses over a benefit period or lumping them into a single month. BEM 554 (August 2020) p. 9. Petitioner testified that she prefers lumping her expenses into a single month. As a result, Petitioner is unlikely to see a supplement of benefits if MDHHS processes the expenses for a month when the maximum FAP benefit amount is issued because of the temporary COVID-19 pandemic policy.

**DECISION AND ORDER**

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

- (1) Redetermine Petitioner's FAP eligibility beginning December 2020 subject to the finding that Petitioner submitted \$321 in medical expenses to MDHHS on August 10, 2020; and
- (2) Issue supplements, if any, and notice, in accordance with policy.

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

CG/tm



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**Christian Gardocki**

Administrative Law Judge  
for Elizabeth Hertel, 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  
M. Holden  
D. Sweeney  
BSC4  
MOAHR

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

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