



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: February 17, 2021
MOAHR Docket No.: 20-007609
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 February 11, 2021. Petitioner participated and was unrepresented. [REDACTED] Petitioner's wife, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Anna Shetler, specialist, and Jeffrey Robinson, manager.

ISSUES

The first issue is whether Petitioner timely requested a hearing to dispute a termination of Food Assistance Program (FAP) eligibility beginning August 2020.

The second issue is whether MDHHS properly denied Petitioner's application for FAP benefits dated September 1, 2020.

The third issue is whether MDHHS properly determined Petitioner's FAP eligibility beginning December 2020.

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 July 2020, Petitioner was an ongoing recipient of FAP benefits.
2. On July 18, 2020, MDHHS mailed Petitioner notice of a termination of FAP benefits beginning August 2020 due to excess net income.

3. On [REDACTED], 2020, Petitioner reapplied for FAP benefits. As of September 1, 2020, Petitioner received ongoing employment and unemployment income.
4. On September 14, 2020, MDHHS mailed Petitioner a Verification Checklist (VCL) giving Petitioner until September 24, 2020, to return verification of 30 days of employment and unemployment income.
5. On September 25, 2020, MDHHS denied Petitioner's application dated [REDACTED] 2020, due to Petitioner's failure to timely verify employment and unemployment income.
6. As of September 25, 2020, Petitioner failed to submit to MDHHS 30 days of employment and unemployment income verification.
7. On [REDACTED], 2020, Petitioner reapplied for FAP benefits.
8. On unspecified dates, Petitioner verified the following gross employment income for Petitioner: \$1,218.95 on September 11, 2020, \$1,282.11 on September 25, 2020, \$548.42 on October 9, 2020, and \$560.40 on October 13, 2020.
9. On unspecified dates, Petitioner verified the following gross unemployment income: \$514.96 on October 1, 2020, and \$584.41 on October 14, 2020.
10. As of October 2020, Petitioner's household received \$60 in monthly child support.
11. On November 10, 2020, MDHHS determined that Petitioner was eligible for \$128 in monthly FAP benefits beginning December 2020 based on monthly employment income of \$2,688 and unearned income of \$1,334.
12. On [REDACTED], 2020, Petitioner requested a hearing to dispute the following: State Disability Assistance (SDA) eligibility, the termination of FAP beginning August 2020, the denial of his application dated [REDACTED], 2020, and the determination of \$128 in FAP benefits for December 2020.
13. On February 11, 2021, during an administrative hearing, Petitioner withdrew his dispute concerning SDA benefits.

CONCLUSIONS OF LAW

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. MDHHS administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's hearing request indicated a dispute of SDA eligibility. Petitioner testified that he did not apply for SDA and did not intend to request a hearing over SDA eligibility. Petitioner further testified that he wished to withdraw his hearing request concerning SDA. MDHHS had no objections to Petitioner's withdrawal concerning SDA. Based on Petitioner's withdrawal, Petitioner's hearing request concerning SDA will be dismissed.

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 also requested a hearing to dispute a termination of FAP benefits beginning August 2020. Exhibit A, pp. 3-4. A Notice of Case Action dated July 18, 2020, stated that Petitioner's FAP eligibility ended due to excess net income. Exhibit A, pp. 40-44.

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, though requests disputing FAP eligibility may be made orally. *Id.*, p. 2.

MDHHS received Petitioner's written hearing request on November 30, 2020. MDHHS received Petitioner's hearing request 135 days after notice of benefit termination was sent. When asked during the hearing why he waited so long to request a hearing, Petitioner testified that he was trying to reapply and avoid a hearing. Petitioner's testimony does not excuse the tardiness of his hearing request. Due to an untimely hearing request, Petitioner's dispute over a termination of FAP benefits beginning August 2020 will be dismissed.

Petitioner also requested a hearing to dispute a denial of a FAP application dated [REDACTED], 2020. A Notice of Case Action dated September 25, 2020, stated that Petitioner's application was denied due to a failure to timely verify employment and unemployment income. Exhibit A, pp. 45-49.

For FAP benefits, MDHHS is to verify income at application. BEM 505 (October 2017) p. 14. For all programs, MDHHS is to tell the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. MDHHS is to send a VCL to request verification. *Id.* MDHHS is to allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. *Id.*, p. 7. MDHHS is to send a negative action notice when:

- The client indicates refusal to provide a verification, or
- The time period given has elapsed and the client has not made a reasonable effort to provide it. *Id.*

Petitioner's application reported ongoing receipt of employment income. Exhibit A, pp. 8-14. MDHHS had additional information that Petitioner also received unemployment income. In response, MDHHS mailed Petitioner a VCL on September 14, 2020, giving Petitioner until September 24, 2020, to verify the last 30 days of employment and unemployment income. Exhibit B, pp. 1-2. MDHHS testified that Petitioner submitted to MDHHS on September 17, 2020, verification of one biweekly pay dated September 9, 2020, and a second pay dated September 11, 2020. MDHHS stated that Petitioner's pay documents were only two days apart and presumably not verification of all income from a 30-day period.¹ Additionally, Petitioner did not verify any unemployment income. Petitioner testified that he did not even receive the VCL until after September 24, 2020. Even if Petitioner's testimony was accurate, the fault does not appear to lie with MDHHS. The address on the VCL matched Petitioner's verified mailing address. Also, MDHHS credibly testified that the VCL was "central printed". A central printing is one in which the mailing preparation is computer-generated and highly reliable. Given the evidence, Petitioner did not verify employment or unemployment income before MDHHS denied Petitioner's application.

The evidence established that MDHHS properly requested proof of Petitioner's employment income and unemployment income. The evidence further established that Petitioner failed to timely verify employment and unemployment income. Thus, MDHHS properly denied Petitioner's application dated [REDACTED] 2020.

After Petitioner's application denial, he reapplied for FAP benefits on [REDACTED], 2020. Exhibit A, pp. 23-30. MDHHS approved Petitioner's application but a Notice of Case Action dated November 10, 2020, indicated that Petitioner's FAP eligibility would be reduced to \$128 beginning December 2020.² Exhibit A, pp. 58-62. Petitioner lastly requested a hearing to dispute the determination that he was eligible for \$128 in FAP benefits. Exhibit A, pp. 3-4.

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 notice sent to Petitioner included a summary listing all relevant budget factors. Exhibit A, p. 28. During the hearing, all budget factors were discussed with Petitioner. Petitioner only disputed the earned and unearned income calculated by MDHHS.

MDHHS calculated a monthly unearned income of \$1,334 for Petitioner. Petitioner testified that he could not state whether the amount was correct and provided no evidence to establish a different amount for unearned income. MDHHS testified that \$60

¹ Petitioner testified that he occasionally received COVID-19 supplemental pays from his employer. Presumably, the second pay submitted by Petitioner was just that.

² It was not disputed that Petitioner actually received \$1,071 in FAP benefits for December 2020: the maximum amount of benefits for Petitioner's group size. Petitioner only received the maximum FAP issuance due to a temporary policy during the COVID-19 pandemic. As the policy is only temporary, a detailed analysis of Petitioner's FAP eligibility is still required.

of the \$1,334 came from the average of the previous three months of child support and the remainder (\$1,274) came from Petitioner's unemployment income.³

MDHHS testified that Petitioner's unemployment income was calculated from Petitioner's most recent 30 days of biweekly unemployment pays: \$514.96 on October 1, 2020, and \$584.41 on October 14, 2020.⁴ Exhibit A, pp. 16-17. 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 monthly unemployment of \$1,182 (rounding to nearest dollar). After adding the \$60 in child support, the evidence established an unearned income of \$1,242.

The evidence failed to establish that MDHHS properly calculated Petitioner's unemployment income. Thus, Petitioner is entitled to a reprocessing of unemployment income for December 2020.

For December 2020, MDHHS calculated a monthly employment income of \$2,688. MDHHS testified that the amount was calculated from Petitioner's biweekly September 2020 gross employment income of \$1,218.95 on September 11, 2020, and \$1,282.11 on September 25, 2020. Exhibit A, pp. 31-32. Indeed, multiplying the average income by 2.15 would result in \$2,688 in monthly income. Curiously, MDHHS did not factor Petitioner's verified pay of \$548.42 dated October 9, 2020. Notably, Petitioner's pay dated October 9, 2020 is considerably less than his pays from September 2020.⁵

The 30-day period used can begin up to 30 days before the interview date or the date the information was requested. BEM 505 (October 2017) p. 6. Evidence was not presented concerning when Petitioner was interviewed, or employment income was requested. Thus, it is possible that MDHHS should not have factored Petitioner's income for October 2020.

The evidence failed to establish that MDHHS properly calculated Petitioner's employment income. Thus, Petitioner is entitled to a reprocessing of employment income for December 2020.

³ An Unearned Income- Summary document dated December 8, 2020, listed \$60 in child support for Petitioner in November 2020. Exhibit A, pp. 18-22. Notably, December 2020 was not a listed month which implies that \$0 was budgeted for child support in December 2020. An unemployment income of \$1,308 was listed for December 2020. *Id.* Given that the summary was printed over a month after the disputed notice of benefit reduction, it is possible that MDHHS updated Petitioner's income for December 2020 and that the income listed on the notice of reduction is obsolete.

⁴ MDHHS testified that its system might have calculated unemployment income by factoring an unemployment pay of \$674 dated October 17, 2020. The testimony did not shed any light into how an unearned income of \$1,334 was calculated for December 2020.

⁵ The lower pay might not be reflective of a decreased income for October 2020. Petitioner received a gross pay of \$560.40 only four days later.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner withdrew his dispute concerning SDA eligibility. Also, Petitioner failed to timely request a hearing to dispute a termination of FAP eligibility beginning August 2020. Concerning SDA and a termination of FAP benefits beginning August 2020, 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 denied Petitioner's application for FAP benefits dated [REDACTED] 2020. Concerning the denial of Petitioner's FAP application dated [REDACTED], 2020, the actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's FAP eligibility beginning December 2020. 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 findings that MDHHS failed to establish that Petitioner's employment and unearned income were properly calculated; and
- (2) Issue supplements, if any, and notice, in accordance with policy.

Concerning Petitioner's FAP eligibility beginning December 2020, the actions taken by MDHHS are **REVERSED**.

CG/tm



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-Oakland-3-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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