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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.: 20-007910  
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 16, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Corlette Brown, hearings facilitator, Latasha Turner, specialist, and Justin Wickham, regulation agent with the Office of Inspector General (OIG).

### **ISSUES**

The first issue is whether there is administrative hearing jurisdiction for Petitioner's request for a new specialist.

The second 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 October 2020, Petitioner was an ongoing recipient of FAP benefits as a member of a 3-person group with her two children.
2. On an unspecified date, MDHHS initiated an investigation to determine whether Petitioner's children's father, [REDACTED] (hereinafter, "Father") lived with Petitioner and their children.
3. As of November 2020, Father's driver's license had an address matching Petitioner's.

4. As of November 2020, Father had a voter registration at an address matching Petitioner's.
5. As of November 2020, Father received \$660 in gross biweekly unemployment benefits at a reported address matching Petitioner's.
6. As of November 2020, Petitioner had \$2,272 in gross monthly employment income.
7. As of November 2020, one of Petitioner's children received \$38 in monthly child support.
8. As of November 2020, Petitioner had \$975 in monthly housing costs and an obligation for heat.
9. On November 30, 2020, MDHHS determined that Petitioner was ineligible for FAP benefits beginning January 2021 due to excess net income for a group that included Father.
10. On [REDACTED], 2020, Petitioner requested a hearing to dispute the termination of FAP benefits and to request a new specialist.

### **CONCLUSIONS OF LAW**

The Food Assistance Program (FAP) [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. The Department (formerly known as the Department of Human Services) 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, in part, to request that a different specialist be assigned to her case. Exhibit A, pp. 3-4. Petitioner's hearing request stated that she has "endured many issues" with her current specialist and claims that her specialist is unprofessional.

A hearing can be granted for actions affecting benefits or services. Administrative hearing jurisdiction is limited to the following:

- Denial of an application or supplemental payment.
- Reduction in benefits or services.
- Suspension or termination of benefits or services.
- Restrictions under which benefits or services are provided.
- Delays in action beyond the standards of promptness.
- A denial of expedited service or the current level of benefits (FAP and CDC only)

BAM 600 (October 2018), p. 5.

Notably, a request for a new specialist is not among the reasons for which a hearing may be granted. Thus, a reassignment of a specialist is not a potential administrative hearing remedy. As stated during the hearing, any reassignment of a specialist is within the discretion of MDHHS. Concerning Petitioner's request for a new specialist, her hearing request will be dismissed.

Petitioner also requested a hearing to dispute a termination of FAP eligibility. Exhibit A, pp. 3-4. A Notice of Case Action dated November 30, 2020, stated that Petitioner was ineligible for FAP benefits beginning January 2021 due to excess net income. Exhibit A, pp. 16-20.

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. The notice of termination sent to Petitioner included a summary of all relevant budget factors. Exhibit A, p. 17. During the hearing, all budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of four persons: Petitioner, Father, and their two children-in-common. Petitioner contended that MDHHS erred by including Father as a group member.

FAP group composition is established by determining the following: who lives together, the relationship(s) of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. BEM 212 (October 2020), p. 1. Generally, persons who live together, and buy and prepare food together are members of the same FAP group. *Id.*, p. 6. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. *Id.*, p. 1.

MDHHS initiated an investigation after discovering that Petitioner and Father separately received FAP benefits at the same reported address. An OIG investigator testified that his investigation discovered the following: Father received ongoing unemployment benefits with a reported address matching Petitioner's, Father was registered to vote since 2012 at an address matching Petitioner's, and Father's driver's license address matched Petitioner's since July 2019. The investigator also testified that he telephoned Father on November 17, 2020, and Father said that he was homeless and only used Petitioner's address for mailing; Father then abruptly terminated the call. The OIG investigator concluded that Father resided with Petitioner and forwarded his investigation report to Petitioner's specialist. Exhibit A, pp. 6-7.

Petitioner testified that Father does not reside with her and that he has used her residence for mailing since 2019. Petitioner also testified that she does not discuss finances with Father and could not state why he was homeless despite ongoing monthly

income. Petitioner further testified that, going back to 2014, she could not provide an alternative address for Father.<sup>1</sup>

Given the undisputed evidence of Father's use of Petitioner's address, Father's abrupt explanation to an investigator, and Petitioner's inability to provide an alternative address for Father since 2014, MDHHS established that Father resides with Petitioner. As Father is the parent to Petitioner's children, he is a mandatory group member and properly included in Petitioner's FAP group.

Documentation of Father's unemployment income listed biweekly gross payments of \$660 to Father in November 2020.<sup>2</sup> Exhibit A, pp. 8-15. MDHHS converts stable or fluctuating biweekly income to a monthly amount by multiplying the average income by 2.15. *Id.*, p. 8. Multiplying Father's average biweekly gross unemployment income by 2.15 results in a monthly unemployment income of \$1,419. It was not disputed that one of Petitioner's children received \$38 in monthly child support. Adding the child support to Father's unemployment income results in a monthly unearned income of \$1,457.

MDHHS factored \$2,272 for Petitioner's monthly employment income; Petitioner's testimony acknowledged that the calculated amount was correct. MDHHS allows a 20% budget credit for timely reported employment income. Applying the credit results in countable employment income of \$1,817 (dropping cents) and a total countable group income (earned + unearned) of \$3,274.

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.

It was not disputed that no persons in Petitioner's household were SDV; thus, medical expenses are not countable. There was also no evidence of countable child support or dependent care expenses.<sup>3</sup>

Petitioner's FAP benefit group size justifies a standard deduction of \$181 (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 the group's countable income results in an adjusted gross income of \$3,093.

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<sup>1</sup> Concerning parenting time, Petitioner testified that her children can see Father, but she does not allow overnight visits.

<sup>2</sup> The document also listed a mailing address for Father which matched Petitioner's address.

<sup>3</sup> The child support received by the group is paid by Father. MDHHS does not count the child support payment as an expense because it is paid to a person in the household. BEM 554 (January 2020) p. 6.

MDHHS credited Petitioner with undisputed monthly housing expenses of \$975. MDHHS credited Petitioner with a standard heating/utility (h/u) credit of \$537. RFT 255 (October 2020) p. 1. Generally, the h/u credit covers all utility expenses and is the maximum credit available.<sup>4</sup> Adding Petitioner's housing and utility credits results in a total shelter obligation of \$1,512.

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 \$3,093 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 January 2021 is \$0; the same issuance amount was calculated by MDHHS. Thus, MDHHS properly terminated Petitioner's FAP eligibility.

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<sup>4</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.

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds no administrative hearing jurisdiction to assign Petitioner a new specialist. Concerning Petitioner's request for a new specialist, 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 terminated Petitioner's FAP eligibility beginning January 2021 due to excess net income. The actions taken by MDHHS are **AFFIRMED**.

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**Christian Gardocki**  
Administrative Law Judge  
for Elizabeth Hertel, Director  
Department of Health and Human Services

