



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: March 19, 2021
MOAHR Docket No.: 21-000312
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 March 11, 2021. Petitioner participated and was represented. The Michigan Department of Health and Human Services (MDHHS) was represented by Danielle Ridgeway, 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 [REDACTED] 2021, Petitioner applied for FAP benefits and reported \$768 in monthly Retirement, Survivors, Disability Insurance (RSDI) and no unemployment income.
2. As of January 8, 2021, Petitioner received unemployment income of \$173 on December 12, 2020, and \$346 on December 26, 2020.
3. Between January 9, 2021, and March 6, 2021, Petitioner received no unemployment income.
4. On January 13, 2021, MDHHS determined that Petitioner was eligible for \$12 in monthly FAP benefits beginning January 2021 based on monthly unearned income of \$1,511.

5. As of January 13, 2021, MDHHS did not send Petitioner a Verification Checklist (VCL) requesting proof of stopped unemployment income.
6. On [REDACTED] 2021, Petitioner requested a hearing to dispute the unearned income factored into her FAP eligibility.

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 the amount of unearned income factored by MDHHS in her FAP eligibility. Exhibit A, p. 3. A Notice of Case Action dated January 13, 2021, stated that Petitioner was eligible for \$12 in FAP benefits beginning January 2021 based on a monthly unearned income of \$1,511.¹ Exhibit A, pp. 10-14.

In determining Petitioner's unearned income, MDHHS factored \$768 in RSDI for Petitioner. Exhibit A, pp. 23-25. Petitioner's testimony acknowledged gross monthly RSDI of \$768. Thus, only \$743 (the difference between the calculated unearned income of \$1,511 and \$768 in RSDI) of Petitioner's unearned income was disputed.

For FAP benefits, MDHHS factors gross unemployment income. BEM 503 (September 2020), p. 38. For non-child support income, MDHHS uses past income to project a FAP group's income. BEM 505 (October 2017) p. 5. MDHHS is to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. *Id.*, p. 6. Stable or fluctuating biweekly employment income is converted to a monthly amount by multiplying the average income by 2.15. *Id.*, p. 8.

Petitioner received unemployment income payments of \$173 on December 12, 2020, and \$346 on December 26, 2020. In determining Petitioner's income, MDHHS budgeted \$346 in ongoing biweekly unemployment income for Petitioner. MDHHS converted the income to a monthly amount by multiplying it by 2.15 resulting in \$743 (dropping cents) in unemployment income.

Petitioner's application dated [REDACTED], 2021 reported no unemployment income. Petitioner testified that she reported no such income because her unemployment stopped due to an unspecified problem in receiving payments. During the hearing, MDHHS checked Petitioner's unemployment history and confirmed that Petitioner

¹ MDHHS also determined that Petitioner was eligible for \$16 in monthly FAP benefits beginning February 2021. The difference between the months was Petitioner's January 2021 eligibility was prorated based on an application date of [REDACTED], 2021. Exhibit A, p. 8.

received a payment of \$173 on January 9, 2021 and no further payments until March 6, 2021.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130 (April 2017) p. 1. MDHHS is to obtain verification when information for an eligibility factor is inconsistent or contradictory. *Id.* MDHHS is to send a VCL to request verification. *Id.*, p. 3. 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.

Petitioner's reporting of no unemployment income was inconsistent with MDHHS's reliance on Petitioner's past unemployment income. MDHHS should have resolved the discrepancy by sending Petitioner a VCL requesting verification of stopped unemployment income. Budgeting Petitioner's past unemployment income without first resolving the contradictory information was improper.

Generally, the remedy for failing to send a VCL is to order MDHHS to send a VCL. In the present case, a VCL would be superfluous as Petitioner's actual unemployment income is known since January 2021. Thus, MDHHS should redetermine Petitioner's FAP eligibility using her actual unemployment income since January 2021.²

² Since March 2020, MDHHS has issued the maximum FAP benefits for a group regardless of the group's calculated eligibility. Thus, Petitioner should not expect a supplement of benefits as she presumably has been receiving the maximum issuance for her group size.


DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's unearned income concerning FAP eligibility for January 2021. 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 January 2021 using Petitioner's actual gross unemployment income; and
- (2) Issue supplements, if any, and notice, in accordance with policy.

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-Macomb-20-Hearings
M. Holden
D. Sweeney
BSC
MOAHR

Petitioner – Via First-Class Mail:

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