



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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[REDACTED]
[REDACTED]

Date Mailed: March 22, 2021
MOAHR Docket No.: 21-000582
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 line on March 17, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Silvester Williams, supervisor.

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. As of January 2021, Petitioner was an ongoing disabled FAP recipient with no other group members.
2. As of January 2021, Petitioner received monthly gross income of \$669 from Retirement, Survivors, Disability Insurance (RSDI), \$145 from Supplemental Security Income (SSI), and \$14 from an averaged State SSI Payment (SSP).
3. As of January 2021, Petitioner had no dependent care, medical, or child support expenses.
4. As of January 2021, Petitioner was responsible for a monthly rent of \$198 and heating and/or cooling obligation.

5. On an unspecified date, MDHHS determined Petitioner to be eligible for \$128 in FAP benefits as of January 2021.
6. On [REDACTED] 2021, Petitioner requested a hearing to dispute FAP eligibility for January 2021.

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 in January 2021 to dispute her current FAP eligibility. Exhibit A, p. 3. MDHHS presented budget documents stating that Petitioner was eligible to receive \$128 in FAP benefits for January 2021.^{1 2} Exhibit A, pp. 23-25.

BEM 556 outlines the factors and calculations required to determine a client's FAP eligibility. FAP eligibility factors group size, countable monthly income, and relevant monthly expenses. During the hearing, all relevant budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of one.³ Petitioner's did not dispute the benefit group size.

It was not disputed that Petitioner received \$669 for RSDI, \$145 in SSI, and \$14 in SSP as of January 2021. For FAP benefits, gross RSDI is countable. BEM 503 (April 2019) p. 29. For FAP benefits, gross SSI is countable. *Id.*, p. 35. For FAP benefits, SSP is counted. *Id.*, p. 36. Adding Petitioner's income results in \$828 in countable income. MDHHS calculated a smaller income of \$820.⁴ As MDHHS calculated a lower income for Petitioner (and therefore, more favorable to Petitioner), it will be accepted as correct.

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-

¹ Though Petitioner was only eligible for \$128 in FAP benefits for January 2021, she actually received \$234 in FAP benefits. Exhibit B, p. 1. Since March 2020, MDHHS issued the maximum amount of FAP benefits for a group size due to a temporary policy during the COVID-19 pandemic. Because the policy is only temporary, clients may still request hearings to dispute their determined FAP eligibility.

² Petitioner also presented her own budget documents. Petitioner calculated a FAP issuance of \$154 for herself. Exhibit 1, pp. 1-5.

³ See BEM 212 for policies on determining group size for FAP benefits.

⁴ MDHHS testimony indicated that Petitioner's RSDI increased \$8 from 2020 accounting for the difference in income.

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. Countable expenses are subtracted from a client's monthly countable income.

It was not disputed that Petitioner was disabled; thus, she is potentially eligible for medical expense credits. MDHHS factored that Petitioner had no medical, dependent care, or child support expenses. Petitioner's testimony acknowledged having no such expenses.

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 gross income results in an adjusted gross income of \$653.

MDHHS credited Petitioner with shelter expenses of \$189; the amount was not disputed by Petitioner. 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.⁵ Adding Petitioner's housing and utility credits results in a total shelter obligation of \$726.

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 \$400 (rounding up 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 \$253 in net income for Petitioner's group. A chart in MDHHS policy lists the proper FAP issuance based on net income and group size. Based on Petitioner's group size and net income, Petitioner's proper FAP benefit issuance for January 2021 is \$158. RFT 260 (January 2021) p. 4.

MDHHS calculated Petitioner to be eligible only to receive \$128. Notably, MDHHS's budget determined Petitioner's FAP eligibility for a potential maximum FAP issuance of \$204. As of December 2020, the maximum FAP issuance for a 1-person group was \$204 and the proper FAP issuance for such a group with a net income of \$253 was \$128. RFT 260 (October 2020) p. 1. As of January 2021, the maximum FAP issuance for a 1-person FAP group increased to \$234. Presumably, MDHHS determined Petitioner's FAP eligibility for

⁵ 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.

January 2021 based on outdated issuance rates.⁶ As a remedy, Petitioner is entitled to updated FAP eligibility based on January 2021 rates.

⁶ MDHHS testimony indicated that Petitioner's previous hearing request prevented its system from issuing an updated budget. Assuming MDHHS's testimony to be accurate, no known policy justifies not updating a client's FAP eligibility due to a previous hearing request.

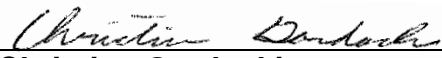
DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's 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 January 2021 subject to the finding that MDHHS is to factor FAP issuance rates as of January 2021; and
- (2) Issue benefit supplements and notice to Petitioner, if any, 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-Oakland-3-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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