



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: April 21, 2021
MOAHR Docket No.: 21-001276
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 April 14, 2021. Petitioner participated and appointed verbal representation during the hearing. [REDACTED], Petitioner's son (hereinafter, "Son"), participated as Petitioner's authorized hearing representative (AHR) and testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Michelle Collins, specialist. Mahad Ahmed of MDHHS participated as a Bengali-English translator.

ISSUE

The 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 February 2021, Petitioner was an ongoing grantee of a 7-person FAP group which included his wife and Son. Petitioner was disabled. No other members were aged (over 60 years), disabled, or disabled veterans.
2. As of February 2021, Petitioner received \$794 in gross monthly Supplemental Security Income (SSI) and a \$14 monthly average State Supplemental Payment (SSP).

3. As of February 2021, Petitioner submitted to MDHHS the following biweekly gross income verifications for his wife: \$819.38 on January 22, 2021, and \$816.50 on February 5, 2021.
4. As of February 2021, Petitioner submitted to MDHHS the following biweekly gross income verifications for Son: \$1,200 on February 5, 2021.
5. As of February 2021, Petitioner had no child support, dependent care, or reported medical expenses.
6. As of February 2021, Petitioner reported to MDHHS average monthly housing expenses of \$80.55 for property taxes.
7. On February 18, 2021, MDHHS terminated Petitioner's FAP eligibility effective March 2021 due to excess net income, in part, based on utility credits for water and telephone and household employment income of \$5,160.
8. On [REDACTED], 2021, Petitioner requested a hearing to dispute the termination of 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 a termination of FAP benefits. Exhibit A, pp. 3-4. A Notice of Case Action dated February 18, 2021, stated that Petitioner's FAP eligibility would end March 2021 due to excess net income. Exhibit A, pp. 6-10.

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. During the hearing, MDHHS provided budget pages for March 2021 listing some budget factors. Exhibit A, pp. 19-20. Additionally, the determination notice sent to Petitioner included a budget summary which listed all relevant budget factors. Exhibit A, p. 7. During the hearing, all budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of seven.¹ Petitioner's did not dispute the benefit group size.

¹ See BEM 212 for policies on determining group size for FAP benefits.

MDHHS factored an unearned income of \$808 from SSI and SSP. For FAP, MDHHS is to count a gross SSI benefit. BEM 503 (January 2020) p. 34. Documents obtained from a data exchange with the Social Security Administration verified that Petitioner received \$794 in SSI as of February 2021. Exhibit A, pp. 15-17. Petitioner testified that he only received \$783 in monthly SSI; Petitioner's testimony would be correct for his 2020 monthly income. Presented documents verified a monthly income for 2021 of \$794. Petitioner also testified that SSA recently reduced the SSI he receives; Petitioner's recent reduction, if true, would have no impact on the present case as no reporting of a reduction was made as of Petitioner's hearing request date.

Petitioner's \$808 income also included \$14 from SSP. Petitioner denied receiving SSP. Petitioner's denial was dubious given that SSI recipients are automatically entitled to receive SSP. BEM 660 (October 2020) p. 1. SSI recipients in independent living situations are eligible to received \$42 quarterly (an average of \$14 per month). RFT 248 (January 2021) p. 1. The evidence established an unearned income of \$808 for Petitioner.

MDHHS calculated employment income of \$5,160 for Petitioner's household. MDHHS testified that the income was the total of Son's and Petitioner's wife's income. For FAP benefits, MDHHS generally counts gross wages.² BEM 501 (July 2017), p. 7. 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. MDHHS presented income documents for Petitioner's wife listing gross pays of \$819.38 on January 22, 2021, and \$816.50 on February 5, 2021.³ Exhibit A, p. 12-15. Multiplying Petitioner's wife's average biweekly gross employment income by 2.15 results in a countable income of \$1,758 (dropping cents). MDHHS also presented Son's employment income document dated February 5, 2021, listing \$1,200 in biweekly gross income. It was not disputed that Son's employment recently started and the single pay was a fair projection for his earnings. Multiplying Son's biweekly gross employment income by 2.15 results in a countable income of \$2,580. Adding Son's and Petitioner's wife's countable income results in a total income of \$4,338. MDHHS could not explain how it calculated a higher income of \$5,160.

Given the evidence, MDHHS erred in determining Petitioner's group's countable employment income. As a remedy, MDHHS will be ordered to recalculate Petitioner's FAP eligibility, with particular emphasis on recalculating the group's employment income. For purposes of the remaining analysis only, it will be accepted that Petitioner's household income was \$5,160.⁴

² Exceptions to using gross wages include the following: earned income tax credits, flexible benefits, striker earnings, student disregards, and census worker earnings. BEM 501 (July 2017), p. 7. None of these exceptions apply to the present case.

³ A third pay of \$626.76 on January 8, 2021, was also presented. This income was not factored because it was outside of the 30 days period from the determination dated February 18, 2021.

⁴ The purpose of performing an analysis accepting \$5,160 in income is to match MDHHS's budget so that potential errors can be detected in the remaining budget analysis.

MDHHS allows a 20% budget credit for timely reported employment income. Applying the credit to \$5,160 for employment income results in countable employment income of \$4,128. Adding countable employment income of \$4,128 to Petitioner's unearned income of \$808 results in total countable income of \$4,936.

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 Petitioner's group had no child support or dependent care expenses. MDHHS credibly testified that Petitioner reported zero medical expenses on a redetermination form dated January 4, 2021; there was no evidence that Petitioner subsequently reported having medical expenses after the redetermination. The evidence established no countable child support, dependent care, and medical expenses.

Petitioner's FAP benefit group size justifies a standard deduction of \$243 (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 running net income results in an adjusted gross income of \$4,693.

MDHHS credited Petitioner with monthly housing expenses of \$80.55 for property taxes. Petitioner's testimony claimed to have property insurance expenses; however, the evidence did not establish a prior reporting.⁵ MDHHS credibly testified that Petitioner's redetermination form dated January 4, 2021, did not claim property insurance expenses. MDHHS further testified that a check of Petitioner's submissions to MDHHS indicated no property insurance expense submissions since January 4, 2021. Given the evidence, Petitioner is entitled to \$80.55 in housing expenses.

MDHHS credited Petitioner with standard utility credits for water (\$97) and telephone (\$29), but no other utilities. Given that Petitioner is responsible for property taxes, he presumably owns his home. As a homeowner, Petitioner is presumably responsible for heating and cooling expenses. Generally, the h/u credit covers all utility expenses and is the maximum credit available.⁶ As of February 2021, the h/u standard was \$547. RFT

⁵ Petitioner also claimed auto insurance obligations. Auto insurance is not a factor in determining FAP eligibility.

⁶ 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.

255 (October 2020) p. 1. MDHHS gave no explanation for not crediting Petitioner with the h/u standard.

Given the evidence, MDHHS erred in determining Petitioner's utility credits. As a remedy, MDHHS will be ordered to also recalculate Petitioner's utility credits. For purposes of the remaining analysis, it will be accepted that Petitioner was only entitled to utility credits totaling \$126.

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 \$4,693 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 is \$0. Thus, the errors committed by MDHHS are limited to the calculations of employment income and utility credits.


DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated 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 March 2021 based on the following findings:
 - a. MDHHS failed to establish it properly determined Petitioner's group's employment income;
 - b. MDHHS failed to establish it properly determined Petitioner's group's utility credits; and
- (2) Issue a supplement of benefits and notice, 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-Wayne-55-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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