



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 14, 2021
MOAHR Docket No.: 21-001326
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 April 8, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Kelly Teed, hearings facilitator.

ISSUE

The issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) eligibility for 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. On December 11, 2020, Petitioner received a final pay of \$335.11 following a termination of employment.
2. On [REDACTED], 2020, Petitioner applied for FAP benefits and reported recently stopped employment.
3. On December 30, 2020, MDHHS "approved" Petitioner for \$0 in FAP benefits. for December 2020.¹

¹ Per a Notice of Case Action dated December 30, 2020.

4. As of December 30, 2020, MDHHS did not mail a Verification Checklist (VCL) to Petitioner requesting proof of December 2020 unemployment income.
5. On [REDACTED], 2021, Petitioner requested a hearing to dispute FAP eligibility from December 2020.

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. MDHHS (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 to dispute FAP eligibility only from December 2020. Petitioner did not dispute the group size or expenses factored by MDHHS. The first dispute concerned Petitioner being approved for \$9 in FAP benefits yet receiving \$0 in FAP benefits.²

To determine benefit proration for application months, MDHHS is to multiply the monthly benefits by the number of days remaining in the month including the application date. BEM 556 (January 2020) p. 6. This amount is divided by the total number of days in the month. *Id.* If the benefit amount is less than \$10, the FAP group will not receive an initial benefit.

It was not disputed that Petitioner applied for FAP benefits on [REDACTED], 2020. MDHHS credibly testified that Petitioner was determined eligible for \$9 in FAP benefits. As Petitioner was determined eligible for only \$9 in FAP benefits, a FAP issuance of \$0 is proper for her application month.

Petitioner additionally raised disputes over the calculation of her employment income. MDHHS credibly testified that employment income of \$360 was calculated in determining Petitioner's FAP eligibility for December 2020. It was not disputed that Petitioner's only employment income in December 2020 was a final pay from employment on December 11, 2020, for \$335.11.

Generally, MDHHS is to convert stable and fluctuating income that is received more often than monthly to a standard monthly amount. BEM 554 (October 2017) p. 8. Average biweekly income is multiplied by 2.15 to convert it into a monthly amount. *Id.* Income that stops is to not be converted; instead, actual pays for the month should be used. *Id.*, p. 9.

² All of MDHHS's evidence derived from testimony as Petitioner's objection to the admission of a hearing packet was upheld after she claimed that she did not receive the packet while MDHHS could offer no evidence that the packet was mailed.

MDHHS converted Petitioner's single biweekly pay of \$335.11 to a monthly amount by multiplying it by 2.15 and dividing the product by 2. As it was not disputed that the single pay for Petitioner was her final pay from employment, no conversion should have occurred. As a remedy, Petitioner is entitled to a recalculation of benefits for December 2020 based on her actual employment income of \$335.11.

Petitioner also disputed the unearned income calculated in the December 2020 benefit determination. It was not disputed that MDHHS calculated an unearned income of \$688.

MDHHS testified that Petitioner submitted documentation of an unemployment benefit period from March 22, 2020, through December 26, 2020, listing a weekly benefit of \$160. MDHHS further testified that it assumed that Petitioner received four pays in December 2020, given the end date of December 26, 2020, and a 4.3 conversion was applied to Petitioner's weekly benefit of \$160. The result was in \$688 in countable unemployment income.

Petitioner responded that she only received employment benefits of \$160 on December 16, 2020, and December 18, 2020. The evidence suggested, but not definitively, that Petitioner reported this information to MDHHS.

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 did not present evidence that a VCL was sent concerning unemployment income or what was specifically requested. Without such evidence, it cannot be determined whether Petitioner's submission of unemployment documents justified calculating Petitioner's unemployment income based on a converted month of full income. MDHHS seemed to agree with this conclusion as it testified that it will reconsider Petitioner's FAP eligibility if or when Petitioner verifies her unemployment payments from December 2020.³ Given the evidence, Petitioner is also entitled to a redetermination of December 2020 FAP eligibility due to MDHHS's failure to verify a proper request for unemployment income.

³ Also, Petitioner seemed to contend that if her submission of unemployment income was inadequate, then MDHHS should have told her so before determining eligibility for December 2020. MDHHS has no obligation to inform clients that a submission does not comply with VCL requirements. However, specialists should be available to clients if an inquiry is made.


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 for 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 for December 2020 based on the following findings:
 - a. MDHHS erred by converting Petitioner's stopped employment income to a monthly amount;
 - b. MDHHS erred by not requesting proof of Petitioner's December 2020 unemployment income; 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-Macomb-12-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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