



GRETCHEN WHITMER
GOVERNOR

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

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DIRECTOR

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██████████, MI 48210

Date Mailed: June 30, 2021
MOAHR Docket No.: 21-002337
Agency No.: ██████████
Petitioner: ██████████

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 June 23, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by D'andre Wisdom, specialist.

ISSUES

The first issue is whether MDHHS properly denied Petitioner's application for Child Development and Care (CDC) benefits.

The second issue is whether MDHHS properly denied Petitioner's application for Food Assistance Program (FAP) benefits.

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 ██████████ 2021, Petitioner applied for CDC and FAP benefits and reported a household of three persons and that all household members were neither senior, disabled, nor disabled veterans. Petitioner also reported a monthly housing obligation of \$850, a responsibility for heating and/or cooling, and no dependent care expenses.
2. On an unspecified date, Petitioner submitted to MDHHS verification of the following employment income: ██████████ on April 2, 2021, and ██████████ on April 26, 2021.

3. On [REDACTED] 2021, Petitioner requested a hearing to dispute the denial of CDC and FAP benefits.
4. On May 13, 2021, MDHHS mailed Petitioner notice of a denial of CDC and FAP benefits.

CONCLUSIONS OF LAW

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. MDHHS administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020. 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 dispute a denial of CDC benefits.¹ Exhibit A, pp. 3-4. It was not disputed that Petitioner applied for CDC on [REDACTED], 2021. A Notice of Case Action dated May 13, 2021, stated that Petitioner was denied CDC benefits due to excess income for the program's entry level. Exhibit A, pp. 10-12.

There are five types of CDC eligibility groups for which an income determination is waived: those involved with Children's Protective Services, foster care, Family Independence Program recipients, migrant farmworkers, and homeless. BEM 703 (May 2020) pp. 13-14. If a client's CDC group is not eligible for an income waiver, then the group may be eligible for CDC benefits, subject to a determination of income. *Id.*, p. 16.

There was no evidence that Petitioner's group qualified for a waiver of income-eligibility. Thus, Petitioner is left to qualify for CDC benefits based on an income determination.

To be eligible for the CDC program at application, a program group's countable gross monthly income must not exceed the maximum monthly gross income limit by family size associated with the program entry limit. *Id.* Income eligible families may have a co-payment amount called a family contribution. *Id.*

For CDC 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. Biweekly income is converted to a monthly

¹ Curiously, Petitioner requested a hearing one day before MDHHS mailed notice of FAP and CDC denial. No explanation was given to how Petitioner was aware of the application denials before receiving written notice.

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.

amount by multiplying the average income by 2.15. *Id.*, p. 8. 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.

Petitioner reported and verified receiving ██████ in gross biweekly wages on April 2, 2021, and April 16, 2021. Exhibit A, pp. 6-7. Multiplying Petitioner's average biweekly income by 2.15 results in countable monthly income of \$█████³

It was not disputed that Petitioner's CDC group size was three. For a group size of three persons, the income level for entry into the CDC program is \$2,715. RFT 270 (January 2021) p. 1.

The evidence established that Petitioner's income exceeds the income limit for entry level into the CDC program. Thus, MDHHS properly denied Petitioner's application for CDC benefits.

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 BAM, BEM, and RFT.

Petitioner also requested a hearing to dispute a denial of FAP benefits. Exhibit A, pp. 3-4. A Notice of Case Action dated May 13, 2021, stated that Petitioner was denied FAP benefits due to excess income. Exhibit A, pp. 10-12.

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. MDHHS provided testimony of all relevant budget factors. During the hearing, all budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of three.⁴ Petitioner did not dispute the benefit group size factored by MDHHS.

It was not disputed that Petitioner received biweekly gross income of \$█████. For FAP benefits, MDHHS generally counts gross wages.⁵ 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

³ Petitioner credibly testified that she has vehicle expenses. Vehicle expenses are not factored into a CDC determination. Petitioner also testified that her net income falls far below \$3,010 per month. Petitioner's testimony does not alter that policy directs MDHHS to factor gross income.

⁴ See BEM 212 for policies on determining group size for FAP benefits.

⁵ 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.

converted to a monthly amount by multiplying the average income by 2.15. *Id.*, p. 8. Multiplying Petitioner's average biweekly gross employment income of \$1,400 by 2.15 results in a monthly employment income of \$ [REDACTED] MDHHS allows a 20% budget credit for timely reported employment income. Applying the credit results in countable employment income of \$ [REDACTED]⁶

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels.⁷ 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 SDV members; thus, medical expenses are not counted. Petitioner had no child support expenses. MDHHS credibly testified that Petitioner reported no dependent care expenses on her application; given Petitioner's application reporting, MDHHS properly gave Petitioner no credit for dependent care expenses.⁸

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 non-housing 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 countable income results in an adjusted gross income of [REDACTED]

MDHHS credited Petitioner with undisputed monthly housing expenses of \$850. 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.⁹ Adding Petitioner's housing and utility credits results in a total shelter obligation (housing + utilities) of \$1,387.

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 \$267 (rounding up to nearest dollar).

⁶ As discussed in the CDC analysis, MDHHS is to factor gross income. Thus, Petitioner's testimony concerning receipt of net income does not alter the analysis.

⁷ Petitioner's credible testimony that she has vehicle expenses will not be considered because vehicle expenses are not countable in determining FAP eligibility.

⁸ Petitioner testified that she has dependent care expenses. However, because they were not reported, MDHHS cannot be faulted for not factoring them.

⁹ 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.


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 [REDACTED] net income for Petitioner's group. The monthly net income limit for a group size of three persons is \$1,810. RFT 250 (October 2020) p. 1. Petitioner's net income exceeds the net income limit. Thus, MDHHS properly denied Petitioner's application for FAP benefits.¹⁰

¹⁰ Petitioner is encouraged to reapply for FAP benefits because factoring her previously unreported dependent care expenses may result in benefit eligibility.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's application dated [REDACTED] 2021, requesting FAP and CDC benefits. The actions taken by MDHHS are **AFFIRMED**.

CG/tm



Christian Gardocki
Administrative Law Judge

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-15-Hearings
M. Holden
D. Sweeney
L. Brewer-Walraven
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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