



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 48235

Date Mailed: June 30, 2021
MOAHR Docket No.: 21-002359
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 24, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Victoria Franklin, specialist.

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. On November 24, 2020, Petitioner submitted to MDHHS redetermination documents for continuing FAP eligibility. Petitioner reported a group which included ██████████, Petitioner's daughter (hereinafter, "Daughter"), and ██████████ Petitioner's granddaughter (hereinafter, "Granddaughter"). Additionally, Petitioner reported no changes in housing expenses.
2. Beginning December 2020, Daughter received the following gross employment income: ██████████ on December 25, 2020, \$██████████ on January 1, 2021, ██████████ on January 8, 2021, and ██████████ on January 15, 2021.
3. As of December 2020, Daughter was uncooperative with obtaining child support since July 2020.

4. As of December 2020, Petitioner reported to MDHHS monthly housing expenses of \$191.67 and a responsibility for heating expenses.
5. As of December 2020, Petitioner had no dependent care or reported medical expenses. Petitioner was responsible for \$42 in monthly child support.
6. Beginning January 2021, Petitioner received [REDACTED] in gross monthly Retirement, Survivors, Disability Insurance (RSDI).
7. On May 10, 2021, MDHHS determined that Petitioner was ineligible for FAP benefits beginning January 2021 due to excess net income.
8. On [REDACTED] 2021, Petitioner verbally requested a hearing to dispute the termination of FAP benefits.

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 verbally requested a hearing to dispute a termination of FAP eligibility¹. Exhibit A, p. 3. A Notice of Case Action dated May 10, 2021, stated that Petitioner's FAP eligibility would end January 2021 due to excess net income.² Exhibit A, pp. 13-17. It was not disputed that MDHHS stopped Petitioner's FAP eligibility following a benefit redetermination.³

BEM 556 outlines the factors and calculations required to determine a client's net income for FAP benefits. Net income factors group size, countable monthly income, and relevant monthly expenses. The termination notice sent to Petitioner included a summary listing all FAP relevant eligibility factors. Exhibit A, p. 14. During the hearing, all budget factors were discussed with Petitioner.

¹ Clients may orally request hearings to dispute FAP eligibility. BAM 600 (January 2021) p. 2.

² The notice also stated Petitioner failed to verify self-employment income. There was no evidence that MDHHS was unable to determine eligibility due to a lack of self-employment income information. Thus, this basis for termination will not be considered.

³ Curiously, MDHHS waited over five months after Petitioner's last FAP issuance to notify Petitioner of benefit termination. MDHHS testified that the processing of Petitioner's redetermination for FAP was delayed due to worker oversight.

Petitioner's redetermination form dated November 24, 2020, reported a household of three persons.⁴ In determining Petitioner's FAP eligibility, MDHHS factored a group size of only two.⁵ MDHHS testimony explained that only Petitioner and Granddaughter were group members because Daughter was disqualified since July 2020 due to failing to cooperate with obtaining child support. MDHHS's testimony was credible and not rebutted. For FAP, failure to cooperate in obtaining child support without good cause results in disqualification of the individual who failed to cooperate. BEM 255 (January 2020) p. 14. Given the evidence, MDHHS properly factored a group size of two persons.

MDHHS is to budget a pro rata share of income for persons disqualified due to child support. BEM 550 (October 2020) p. 3. The income of a persons disqualified is to be divided by potentially eligible group members and multiplied by actual benefit group members. *Id.*

Daughter received the following gross weekly income from employment: ██████ on December 25, 2020, ██████ on January 1, 2021, ██████ on January 8, 2021, and \$█████ on January 15, 2021. For FAP benefits, MDHHS generally counts gross wages.⁶ BEM 501 (January 2020), p. 6. 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 weekly employment income is converted to a monthly amount by multiplying the average income by 4.3. *Id.*, p. 8. Multiplying Daughter's average weekly gross employment income by 4.3 results in a monthly income of ██████. Applying the 2/3 pro rata share to the group due to child support disqualification results in gross income of ██████ for the group: the same amount calculated by MDHHS. MDHHS allows a 20% budget credit for timely reported employment income. Applying the credit to the \$█████ in monthly income results in countable employment income of \$█████.

It was not disputed that Petitioner received ██████ in gross monthly RSDI as of January 2021. For FAP benefits, gross RSDI is countable. BEM 503 (April 2019) p. 29. Adding Petitioner's RSDI to the group countable employment income of \$█████ results in a total countable income of ██████.

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

⁴ Petitioner testified that Daughter has since left his household, along with Granddaughter. Petitioner's testimony is not relevant to his eligibility at the time of termination (January 2021) as there was no evidence that Petitioner reported the change to MDHHS before MDHHS terminated Petitioner's FAP eligibility. Petitioner's testimony is relevant to current FAP eligibility. Indeed, Petitioner reapplied for FAP benefits and was approved based on a household that did not included Daughter.

⁵ See BEM 212 for policies on determining group size for FAP benefits.

⁶ 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.

\$35 for each SDV group member(s) and an uncapped excess shelter expense. Countable expenses are subtracted from a client's monthly countable income.

Petitioner reported no medical expenses on his redetermination form. Exhibit A, p. 7. It was not disputed that Petitioner had no dependent care expenses and \$42 in child support 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 countable income results in an adjusted gross income of \$[REDACTED]

MDHHS credited Petitioner with monthly housing expenses of \$191.67. Petitioner's testimony estimated his housing expenses closer to \$3,000 per year (\$250 per month). Petitioner's testimony was not consistent with his reporting of no specific change in housing expenses on his redetermination form.⁷ Exhibit A, p. 9.

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.⁸ Adding Petitioner's housing and utility credits results in a total shelter obligation of \$728.67.

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 \$0.⁹

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] 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 for January 2021 is \$0; the same amount was calculated by MDHHS. As Petitioner is not eligible for FAP benefits, MDHHS properly terminated Petitioner's FAP eligibility.

⁷ Petitioner checked that he had housing expense change on his redetermination form but went on to state that he lost his vehicle and that housing expenses were not paid by a guardian. Petitioner's reporting is not indicative of increased housing expenses.


⁸ 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.

⁹ Even if Petitioner's claim of increased expenses were factored, there would be no difference in the excess shelter credit of \$0.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's FAP eligibility beginning January 2021. 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
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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