



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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██████████, MI ██████████

Date Mailed: August 18, 2021  
MOAHR Docket No.: 21-003328  
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 August 16, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Robin Reece, supervisor.

### **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 June 2021, Petitioner was a member of an ongoing FAP benefit group of seven persons.
2. As of June 2021, Petitioner's group received \$██████████ from an unspecified monthly unearned income.
3. As of June 2021, Petitioner received ongoing monthly adoption support subsidies totaling \$██████████
4. As of June 2021, Petitioner's benefit group had no dependent care or child support expenses. Also, neither Petitioner nor any of her group members were over the age of 60 years, disabled, and/or disabled veterans.

5. As of June 2021, Petitioner reported to MDHHS monthly housing expenses of [REDACTED] and a responsibility for heating/cooling costs.
6. On July 6, 2021, MDHHS terminated Petitioner's FAP eligibility beginning July 2021 due to excess net income.
7. On [REDACTED] 2021, Petitioner requested a hearing to dispute the determination 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 requested a hearing to dispute a termination of FAP benefits. Exhibit A, pp. 4-6. MDHHS credibly testified that a Notice of Case Action dated July 6, 2021, stated that Petitioner's FAP eligibility ended July 2021 due to excess net income.<sup>1</sup>

BEM 556 outlines the factors and calculations required to determine a client's net income. FAP net income factors group size, countable monthly income, relevant monthly expenses, and a standard deduction. MDHHS provided budget pages listing most budget factors. Exhibit A, pp. 14-15. All budget factors were discussed with Petitioner during the hearing.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of seven.<sup>2</sup> Petitioner did not dispute the benefit group size.

Petitioner's testimony acknowledged that MDHHS accurately calculated her group's total monthly unearned income. MDHHS factored a total monthly unearned income of \$[REDACTED] for Petitioner's group. The amount included a substantial, though unspecified, amount from adoption subsidies. A FAP budget from January 2021 listed an unearned income of \$[REDACTED] for Petitioner's group. Exhibit A, pp. 12-13. MDHHS credibly testified that Petitioner's FAP eligibility from January 2021 did not count Petitioner's income from adoption subsidies. Thus, the difference between Petitioner's counted unearned income from June 2021 and January 2021 results in [REDACTED] likely being budgeted for adoption subsidies. Adoption support subsidies are counted as income for all programs other

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<sup>1</sup> A Notice of Case Action dated June 5, 2021, stated that Petitioner's FAP eligibility would end July 2021 due to a failure to verify income. Exhibit A, pp. 16-19. It was not disputed that Petitioner later verified income resulting in MDHHS calculating that Petitioner was ineligible for FAP benefits due to excess net income.

<sup>2</sup> See BEM 212 for policies on determining group size for FAP benefits.

than Medical Assistance.<sup>3</sup> BEM 503 (January 2021) p. 3. For purposes of FAP benefits, Petitioner's group's unearned income of [REDACTED] is countable.<sup>4</sup>

MDHHS uses certain expenses to determine net income for FAP eligibility. 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, a capped excess shelter expense, and court-ordered child support and arrearages paid to non-household members. *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 had no child support or dependent care expenses. Petitioner's testimony acknowledged that no members of her group were over 60 years, disabled, or disabled veterans. Given the evidence, Petitioner's total non-shelter expenses are \$0.

Petitioner's FAP benefit group size justifies a standard deduction of [REDACTED] (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-shelter expenses are subtracted from the countable monthly income to calculate the group's adjusted gross income. Subtracting the standard deduction and countable non-shelter expenses from Petitioner's countable income results in an adjusted gross income of \$[REDACTED].

MDHHS calculates shelter expenses by adding housing costs plus utility credits. It was not disputed that Petitioner last reported to MDHHS monthly housing costs of [REDACTED].<sup>5</sup> 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.<sup>6</sup> Adding Petitioner's housing and utility credits results in a total shelter obligation of [REDACTED].

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.

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<sup>3</sup> Before January 2021, MDHHS excluded support subsidies for adopted children in determining a client's FAP eligibility. Presumably, the change in policy caused the FAP termination.

<sup>4</sup> Though part of Petitioner's group's unearned income is unknown, most types of gross unearned income (e.g., RSDI, SSI, unemployment, child support...) are countable (see BEM 503).

<sup>5</sup> Petitioner testified that her housing costs recently increased by \$[REDACTED] per month. Without evidence of Petitioner reporting the increased expense, MDHHS cannot be faulted for factoring Petitioner's last reported housing expense of \$[REDACTED].


<sup>6</sup> 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] in net income for Petitioner's group. The net income limit for Petitioner's group size is [REDACTED]. RFT 250 (October 2020) p. 1. Petitioner's net income exceeds the net income limit. Thus, MDHHS properly terminated Petitioner's FAP eligibility.

**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 July 2021. The actions taken by MDHHS are **AFFIRMED**.

CG/tm

  
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**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-Oakland-2-Hearings  
M. Holden  
D. Sweeney  
BSC4  
MOAHR

**Petitioner – Via First-Class Mail:**

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██████████, MI ██████████