



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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Date Mailed: September 15, 2021
MOAHR Docket No.: 21-003761
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 on September 8, 2021. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Princess Ogundipe, specialist.

ISSUE

The issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) benefits 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 July 2021, Petitioner was an ongoing FAP recipient who resided with his mother.
2. As of July 2021, Petitioner was eligible to receive ██████ in monthly gross RSDI but only received ██████.
3. On July 8, 2021, Petitioner's mother reported to MDHHS that Petitioner is not obligated to pay rent or utilities.
4. On July 8, 2021, MDHHS reduced Petitioner's monthly FAP eligibility to ██████, in part, based on ██████ in unearned income, no rental obligation, and a telephone credit.

5. On [REDACTED] 2021, Petitioner requested a hearing to dispute the reduction in 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 decrease in FAP benefit eligibility. Exhibit A, pp. 3-4. A Notice of Case Action dated July 8, 2021, stated that Petitioner's monthly FAP benefit would decrease to [REDACTED] beginning August 2021.¹ Exhibit A, pp. 5-9. The notice included a summary of all FAP eligibility factors. During the hearing, all FAP eligibility factors were discussed with Petitioner. Petitioner disputed only RSDI, housing costs, and credited utilities. Petitioner's testimony agreed that his dispute was limited to only those eligibility factors and that an entire FAP budget analysis was unnecessary.

MDHHS budgeted [REDACTED] in RSDI for Petitioner. Petitioner responded that MDHHS erred because he only received [REDACTED] in monthly RSDI due to recoupment for an overpayment.

For FAP eligibility, generally, MDHHS is to count gross RSDI. BEM 503 (April 2021) p. 29. However, amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. BEM 500 (July 2020) p. 6. These amounts are excluded as income. *Id.*

MDHHS presented documentation of a data exchange from the Social Security Administration listing [REDACTED] in monthly net RSDI for Petitioner. Exhibit B, pp. 1-3. Though [REDACTED] in gross RSDI benefits for Petitioner was also listed, gross benefits subtracted for recoupment are not countable in gross income. The discrepancy between Petitioner's gross and net RSDI suggests a reasonable possibility that MDHHS erred by not excluding income recouped by the Social Security Administration (SSA). Given the evidence, Petitioner is entitled to a reprocessing of FAP eligibility concerning RSDI.

Also disputed were the housing costs and utility obligations in Petitioner's FAP eligibility. MDHHS factored \$0 housing costs and a standard telephone credit of \$29. Petitioner contended that he pays \$[REDACTED] monthly rent and \$[REDACTED] towards all utilities.

¹ Though Petitioner was only eligible for [REDACTED] in monthly FAP benefits, MDHHS has issued the maximum FAP issuance for a client's group size since March 2020. The extra benefits are a result of a temporary policy during the COVID-19 pandemic. As the policy is only temporary, a full analysis of Petitioner's FAP eligibility is still appropriate.

Petitioner resides with his mother. Petitioner's mother also has a FAP case. MDHHS testified that Petitioner's mother's specialist (who is also Petitioner's specialist) spoke with Petitioner's mother on July 8, 2021, concerning redetermining her FAP eligibility. MDHHS further testified that Petitioner's specialist documented that Petitioner's mother reported that Petitioner has not been asked to contribute to household costs and that she rarely asks him due to his limited income. Based on Petitioner's mother's statements, MDHHS adjusted Petitioner's and his mother's FAP case accordingly.²

Petitioner noted that his mother's alleged statement conflicted with previously submitted documentation stating that he pays her [REDACTED] for rent and utilities. Changes in household circumstances are common. MDHHS reasonably accepted Petitioner's mother's statement as a change in circumstances and properly adjusted Petitioner's case.³

Given the evidence, MDHHS properly budgeted Petitioner's housing expenses and utilities, but improperly budgeted Petitioner's RSDI. As a remedy, Petitioner is entitled to a reprocessing of FAP eligibility which factors his RSDI benefit amount after any SSA recoupment.⁴

² Petitioner's mother's case would be affected because any rent that Petitioner pays to his mother is countable as income for her.

³ MDHHS admitted it received a document on August 13, 2021, stating that Petitioner does pay \$[REDACTED] for rent. This document did not lessen the credibility of MDHHS's claim that Petitioner's mother reported that Petitioner is not obligated to pay housing costs. However, MDHHS is required to consider the document dated August 13, 2021 as another reported change. Because the document was submitted after Petitioner's hearing request, it was not considered in the present analysis.

⁴ It is not assumed that Petitioner's RSDI benefits were reduced due to recoupment. Thus, MDHHS may require additional verification, if necessary, to verify the reason for Petitioner's reduced RSDI.


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 August 2021. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reprocess Petitioner's FAP eligibility beginning August 2021, subject to the finding that MDHHS is to not count RSDI benefits recouped for an overpayment as gross 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

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-Wayne18-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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