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GOVERNOR

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

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Date Mailed: October 1, 2021
MOAHR Docket No.: 21-003835
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 September 27, 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) 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 August 2021, Petitioner was an ongoing recipient of FAP benefits.
2. As of August 2021, Petitioner received ██████ per month from a combination of Retirements, Survivors, Disability Insurance (RSDI), Supplemental Security Income (SSI), and Supplemental State Payments (SSP).
3. As of August 2021, Petitioner was responsible for monthly housing costs of ██████ and no utility obligations other than telephone.
4. As of August 2021, Petitioner had no child support, dependent care, or medical expenses.

5. On July 30, 2021, MDHHS determined Petitioner to be eligible for \$ [REDACTED] in monthly FAP benefits beginning September 2021.
6. On [REDACTED], 2021, Petitioner requested a hearing to dispute the determination of FAP benefits. Petitioner also submitted proof of monthly housing expenses of \$ [REDACTED]
7. On August 17, 2021, MDHHS determined Petitioner to be eligible for [REDACTED] in monthly FAP benefits beginning September 2021.

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 the amount of her ongoing FAP eligibility. Exhibit A, p. 3. A Notice of Case Action dated July 30, 2021, stated that Petitioner was eligible for [REDACTED] in FAP benefits beginning September 2021. Exhibit A, pp. 6-10. After Petitioner requested a hearing and submitted proof of increased housing expenses, MDHHS updated Petitioner's FAP eligibility on August 17, 2021, to \$ [REDACTED] in monthly FAP benefits beginning September 2021.^{1 2} Exhibit A, pp. 12-16. The latter determination will be the subject of the analysis.

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. The notice dated August 17, 2021 included a list of all budget factors. Exhibit A, pp. 12-13. During the hearing, all relevant budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of one.³ Petitioner did not dispute the benefit group size.

MDHHS determined Petitioner's monthly unearned income to be [REDACTED] from a combination of RSDI, SSI, and averaged monthly SSP. For FAP benefits, gross RSDI is

¹ MDHHS explained that Petitioner's FAP eligibility decreased, despite increased housing expenses, after an increase in income was discovered.

² MDHHS has issued the maximum FAP issuance for a client's group size since March 2020. Economic Stability Administration Memo 2020-15 (March 26, 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.

³ See BEM 212 for policies on determining group size for FAP benefits.

countable. BEM 503 (April 2019) p. 29. For FAP, MDHHS is to count a gross SSI benefit. BEM 503 (January 2020) p. 34. For FAP, MDHHS is to count a gross SSP benefit. BEM 503 (January 2020) p. 36. Petitioner did not dispute that MDHHS properly calculated her monthly unearned income as [REDACTED]

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 considers an uncapped excess shelter expense and the medical expenses above \$35 for each SDV group member(s).

Petitioner's testimony acknowledged that she did not have child support or dependent care expenses for her household. Petitioner also acknowledged that she did not have medical costs despite being potentially eligible for budget credits as a disabled person.

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 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 running income results in an adjusted gross income of \$[REDACTED].

After requesting a hearing, Petitioner submitted to MDHHS proof of monthly housing expenses totaling \$[REDACTED]. Exhibit A, p. 11. MDHHS credited Petitioner with \$[REDACTED] in housing expenses.

MDHHS credited Petitioner with a standard credit of \$[REDACTED] for a telephone obligation. RFT 255 (January 2021) p. 1. Petitioner contended that she should have received additional utility credits.

The heat/utility (h/u) standard covers all heat and utility costs including cooling. BEM 554 (July 2021) p. 16. A FAP group which has a heating expense or contributes to the heating or cooling expense separate from rent, mortgage or condominium/maintenance payments is entitled to the h/u standard. *Id.*, p. 17. FAP groups whose heat is included in their rent or fees are not eligible for the h/u standard, unless they are billed for excess heat payments from their landlord. *Id.*

Petitioner presented her current lease as purported verification that she is responsible for heat, electricity, and/or other utilities. Exhibit 1, pp. 5-8. Petitioner underlined a portion stating, "The tenant shall... pay for all utilities described above". Exhibit 1, p. 6. Above that portion was a chart listing all utilities with a payment responsibility assigned to Petitioner's landlord. Thus, Petitioner's lease proved her landlord's responsibility for payment of all utilities.

Petitioner contended that she is entitled to the h/u credit because her landlord uses her rent to pay for utilities. It would be fully expected that a landlord with the responsibility to pay utilities may use rent money towards utilities. The circumstance does not entitle Petitioner to the h/u credit.

Petitioner also contended that she should receive the h/u credit because other persons in Petitioner's program receive more FAP benefits than her, presumably because they are eligible for the h/u credit.⁴ A conclusion cannot be drawn as to Petitioner's eligibility for utility credits based on the circumstances of others. Based on the presented evidence, Petitioner is not entitled to any utility credits other than telephone. Adding Petitioner's housing and utility credits result in a total shelter credit 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 [REDACTED].


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 in policy is used to determine the proper FAP benefit issuance. RFT 260 (May 2021) pp. 1-5. Based on Petitioner's group size and net income, Petitioner's proper FAP issuance for September 2021 is \$[REDACTED] the same amount was calculated by MDHHS. Thus, MDHHS properly determined Petitioner's FAP eligibility.

⁴ Details of the program which Petitioner mentioned were not discussed.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner to be eligible for \$█ in FAP benefits beginning September 2021. The actions taken by MDHHS are **AFFIRMED**.

CG/tm



Christian Gardocki
Administrative Law Judge

