



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: April 7, 2022
MOAHR Docket No.: 22-000585
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 telephone hearing was held on April 4, 2022. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Lisa Matlock, Assistant Payments Supervisor.

ISSUE

Did MDHHS properly calculate Petitioner's self-employment income in determining her Food Assistance Program (FAP) budget?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing recipient of FAP benefits.
2. On December 13, 2021, Petitioner submitted a redetermination of FAP benefits. (Exhibit A, pp. 13-19). Petitioner reported that:
 - a. Her household was a group size of six, including a Senior, Disabled, or Disabled Veteran (S/D/V) group member.
 - b. Petitioner currently is suffering a disability and unable to work.
 - c. Petitioner's rent had increased to \$1,325.00 monthly.
 - d. Petitioner did not submit proof of any medical expenses for consideration.

- e. Petitioner provided to MDHHS self-employment information including her 2020 income tax return and proof of expenses (Exhibit A, pp. 23-42).
 - f. Petitioner receives unearned household income from Supplemental Security Income (SSI) and an adoption subsidy (Exhibit A, pp. 46-49).
3. Petitioner submitted to MDHHS a note from her doctor at Spine Specialists of Michigan stating that due to a disability she was unable to work from August 10, 2021 to December 30, 2021 (Exhibit A, pp. 20-22).
 4. On January 7, 2022, a phone interview was conducted between MDHHS and Petitioner as part of the redetermination process. Petitioner reported that she is disabled due to a work injury. Petitioner reported that the only household income was from unearned income (Exhibit A, pp. 43-45).
 5. On January 28, 2022, MDHHS issued a Notice of Case Action to Petitioner informing her that she was eligible for FAP benefits in the amount of \$189.00 monthly for a group size of six, effective February 1, 2022 (Exhibit A, pp. 55-60).
 6. On February 22, 2022, MDHHS received a timely submitted hearing request from Petitioner disputing the monthly amount of FAP benefits she is eligible to receive (Exhibit A, pp. 6-12).

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM). 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 regarding how her self-employment income was calculated when MDHHS determined her to be eligible to receive \$189.00 per month in FAP benefits.

FAP benefit amounts are determined by a client's net income. 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 presented budget documents listing the calculations to determine Petitioner's FAP eligibility. During the hearing, all relevant budget factors were discussed with Petitioner.

Petitioner confirmed that she does not dispute that MDHHS properly calculated all other aspects of her budget including group size, unearned income, and deductions. Petitioner only disputes MDHHS' calculation of her self-employment income.

Individuals who run their own businesses are self-employed. BEM 502 (October 2019), p. 1. The amount of self-employment income before any deductions is called total proceeds. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3. BEM 502 provides a list of expenses that are allowed when determining self-employment countable income, pp. 3-4. MDHHS prospectively income using a best estimate of income expected to be received during the month (or already received). MDHHS is required to seek input from the client to establish an estimate, whenever possible. Prospective budgeting requires knowledge of an individual's current, past and anticipated future circumstances. If income is ending, past income will not be a good indicator of future income. BEM 505 (November 2021), pp. 3-4. The primary source to determine self-employment income is income tax return if the client hasn't started or ended self-employment or received an increase/decrease in income and the tax return is still representative of future income. BEM 502, p. 7.

In this case, MDHHS testified that they calculated Petitioner's income for the new certification period by focusing on the self-employment income Petitioner received in October, November, and December 2021. MDHHS testified that they used Petitioner's 2020 income tax return to obtain Petitioner's income amount, then divided by 12 to determine monthly income. However, Petitioner had informed MDHHS that she was on medical leave and unable to work from August 10, 2021 to December 30, 2022. Petitioner testified, and MDHHS confirmed, that on March 15, 2022 she submitted an additional letter from her doctor extending her work disability to April 7, 2022. Since MDHHS was aware that Petitioner was not working during October, November, and December 2021, they should not have used 2020 income to calculate Petitioner's income because that income is not indicative of what Petitioner would receive during the new certification period. Since MDHHS did not properly calculate Petitioner's self-employment income, they did not act in accordance with policy in determining her monthly budget and monthly FAP amount.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the MDHHS did not act in accordance with Department policy when it calculated Petitioner's FAP budget and determined Petitioner to be eligible for \$189.00 in monthly FAP benefits.

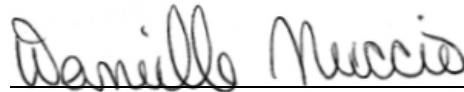
DECISION AND ORDER

Accordingly, MDHHS' decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS

HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reprocess Petitioner's December 13, 2021 redetermination of FAP benefits;
2. Recalculate Petitioner's FAP budget, including self-employment income, consistent with this decision;
3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from February 1, 2022 ongoing;
4. Notify Petitioner of its decision in writing.



Danielle Nuccio
Administrative Law Judge

DN/mp

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

Email Recipients:

MDHHS-Macomb-20-Hearings
D. Sweeney
M. Holden
MOAHR
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First-Class Mail Recipient:

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