



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: April 13, 2022
MOAHR Docket No.: 22-000594
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 on April 6, 2022 via teleconference. Petitioner appeared and represented herself. Valarie Foley, Hearings Facilitator, represented the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly deny Petitioner's request for Food Assistance Program (FAP) benefits?

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 [REDACTED], 2022, Petitioner applied for FAP for a household of three (Exhibit A, pp. 5-14).
2. On February 18, 2022, MDHHS sent Petitioner a Notice of Case Action indicating that she was denied for FAP, effective January 20, 2022 ongoing (Exhibit A, pp. 26-29). The notice indicated that the application was denied due to excess income (Exhibit A, p. 26).
3. On February 22, 2022, Petitioner filed a Request for Hearing, disputing the denial of her FAP application (Exhibit A, p. 3).

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [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.

In this case, Petitioner challenged MDHHS' determination that her household was ineligible for FAP due to excess income. MDHHS calculated that Petitioner had \$4,498 in countable income, which exceeded the income limit for the program.

To determine whether MDHHS properly calculated Petitioner's income, it is necessary to evaluate the household's countable earned and unearned income. BEM 500 (July 2020), pp. 1-5. MDHHS determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (November 2021), p. 1. For the purposes of FAP, MDHHS must convert income that is received more often than monthly into a standard monthly amount. BEM 505, pp. 8-9. To standardize income received weekly, MDHHS multiplies the average weekly income by 4.3. BEM 505, p. 9. To standardize income received biweekly, MDHHS multiplies the average by 2.15. *Id.*

MDHHS uses income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505, p. 6. For fluctuating or irregular income, MDHHS is required to use the past 60 or 90 days if the past 30 days is not a good indicator of future income and the fluctuations in income during the past 60 or 90 days appear to accurately reflect the income that is expected to be received in the benefit month. *Id.* The 60 or 90-day period can begin up to 60 or 90 days before the date the information was requested. *Id.*, p. 7. For irregular income, MDHHS determines a standard monthly amount by adding the amounts together and dividing by the number of months used. *Id.*, p. 9. Department policy further provides that MDHHS should seek input from clients whenever possible when prospecting income. *Id.* at 1.

Here, MDHHS budgeted \$ [REDACTED] in unearned income for the FAP group, based on household members' receipt of Supplemental Security Income (SSI) in the amount of \$ [REDACTED] and Retirement, Survivors, Disability Insurance (RSDI) in the amount of \$ [REDACTED]. For SSI and RSDI, MDHHS counts the gross benefit amount as unearned income. BEM 503 (April 2021), pp. 29, 35. Michigan SSI recipients also receive an additional amount paid from state funds, known as State SSI Payments (SSP). BEM 503, p. 35; RFT 248 (January 2022), p. 1. MDHHS budgeted \$ [REDACTED] per month for the SSI-recipient's SSP payment. The SSI, SSP and RSDI payments were received monthly, so there was no need to further standardize the amounts. MDHHS calculated the unearned income for the household by adding together the monthly SSI, SSP and RSDI income, which was \$ [REDACTED], \$ [REDACTED] and \$ [REDACTED], respectively. Petitioner did not dispute these amounts. Thus, the record shows that MDHHS properly determined that the household receives \$ [REDACTED] in monthly unearned income.

Regarding earned income, MDHHS budgeted \$ [REDACTED] in monthly income, which is based on Petitioner's employment at [REDACTED] (Employer). On February 3, 2022, Petitioner submitted two earnings statements from Employer to MDHHS (Exhibit A, pp. 16-17). The statement dated December 17, 2021 shows that Petitioner received \$ [REDACTED] in gross pay for the period of November 14, 2021 to December 11, 2021 (Exhibit A, p. 16). Thus, the earnings statement appears to reflect what Petitioner received for a period of four weeks. The total amount of \$ [REDACTED] divided by four equals \$ [REDACTED] in weekly income, or \$ [REDACTED] during the biweekly pay periods. The earning statement dated December 30, 2021 shows that Petitioner earned \$ [REDACTED] in gross pay for the period of December 12, 2021 to December 25, 2021.

During the biweekly pay periods ending on December 11, 2021 and December 25, 2021, the records shows that Petitioner earned \$ [REDACTED] and \$ [REDACTED], respectively. Averaging those amounts together equals \$ [REDACTED]. The averaged amount of \$ [REDACTED] multiplied by 2.15 equals \$ [REDACTED]. MDHHS indicated that it also received payment information for Petitioner for January 2022, but that it did not use those amounts when determining Petitioner's income.

At the hearing, MDHHS testified that it multiplied Petitioner's biweekly income by 2.15 to calculate a monthly amount of employment income for Petitioner. However, given the discrepancy between the amount above and the \$ [REDACTED] that MDHHS budgeted, it is unclear from the record which amounts MDHHS used in its calculation.

At the hearing, Petitioner testified that Employer often pays her late and then includes multiple pay periods on one check. Her contention is supported by the record, because the earning statement dated December 17, 2021 includes "regular," and "miscellaneous" earnings. In the "important notes" section, it states that 80 hours is included from November 14, 2021 to November 25, 2021 (Exhibit A, p. 16). When asked to estimate her weekly hours, Petitioner stated that some weeks she works 15-20 hours and some weeks she works up to 40 because she picks up extra shifts. Petitioner testified that she has sent MDHHS letters to try to explain her employment situation.

MDHHS is required to prospect Petitioner's income and determine an accurate estimate of future earnings. Based on Petitioner's testimony and the documents presented, Petitioner's employment income is irregular. For irregular income, MDHHS determines a standard monthly amount by adding the amounts together and dividing by the number of months used. BEM 505, p. 9. MDHHS did not provide any evidence that it used this method for determining Petitioner's income. Additionally, MDHHS failed to adequately explain how it calculated Petitioner's monthly income based on her biweekly earnings.

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 MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's FAP application.

DECISION AND ORDER

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

MDHHS 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. Reregister the [REDACTED], 2022 FAP application;
2. Reprocess the application and recalculate the FAP budget beginning January 20, 2022 ongoing;
3. If Petitioner is eligible for benefits, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED], 2022 ongoing; and
4. Notify Petitioner of its decision in writing.



LJ/tm

Linda Jordan
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

Email Recipients:

MDHHS-Wayne-19-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

First-Class Mail Recipient:

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]