



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: April 11, 2022  
MOAHR Docket No.: 22-000749  
Agency No.: ██████████  
Petitioner: ██████████ ██████████

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

### **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 6, 2022. The Petitioner appeared for the hearing and was represented by her Authorized Hearings Representative (AHR) ██████████ ██████████. The Department of Health and Human Services (Department) was represented by Princess Ogundipe, Eligibility Specialist.

### **ISSUE**

Did the Department properly deny Petitioner's application for Food Assistance Program (FAP) benefits due to excess income?

### **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 ██████████ 2022, the Department received Petitioner's application for FAP benefits listing herself, her husband, and three children in the home, one child attending college, employment for Petitioner, Supplemental Security Income (SSI) for her husband and daughter, and expenses including a mortgage, homeowner's insurance, property taxes, heating, electricity, water and sewer, as well as phone.
2. On January 18, 2022, an application interview was completed during which Petitioner indicated the household included herself, her husband, and three children one of whom was enrolled in college part time, Retirement Survivors Disability Insurance (RSDI) income for her husband and daughter, employment income for herself, a mortgage which includes the costs of property taxes and insurance, heating, electricity, water, phone, and Medicare Part B expenses.

3. Petitioner had the following verified gross income:

February 4, 2022	██████████
January 28, 2022	██████████
January 21, 2022	██████████
January 14, 2022	██████████
January 7, 2022	██████████

4. Petitioner's husband receives ██████████ in gross RSDI benefits per month and is responsible for a \$170.10 Medicare Part B premium.
5. Petitioner's daughter receives ██████████ per month in RSDI income.
6. Petitioner has a mortgage, property tax, and homeowner's insurance expense of \$800.00 per month.
7. On February 11, 2022, the Department issued a Notice of Case Action to Petitioner informing her that she was not eligible for FAP benefits due to exceeding the income limit.
8. On February 22, 2022, the Department received Petitioner's request for hearing disputing the denial of her FAP application.

### **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 (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. The Department (formerly known as the Department of Human Services) 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 disputes the Department's denial of her FAP Application dated ██████████ 2022 based upon excess income. FAP groups which contain a Senior, Disabled, or Disabled Veteran (SDV) group member must have income below the Net Income Limit. BEM 550 (January 2022), p. 1; RFT 250 (October 2021), p. 1. Petitioner's husband receives RSDI benefits and is ██████ years old; therefore, he is an SDV group member and Petitioner's group must have net income below the net income limit for the group size. At the time of Petitioner's Application, the Net Income Limit was \$2,587.00 for a group size of five and \$2,209.00 for a group size of four. RFT 250, p. 1.

All countable, gross earned and unearned income available to the group must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (July 2020), pp. 1–5. Group members are determined by who lives together, the relationships of those living together, whether they purchase and prepare food together, and whether there are any other special circumstances. BEM 212 (January 2022), p. 1. Parents and their children under 22 years of age who live together must be in the same group. *Id.* However, a person who is in student status and does not meet the criteria set forth in BEM 245 is a non-group member. BEM 212, p. 9. A person enrolled in post-secondary education program is in student status and may ineligible for benefits unless they meet certain criteria. BEM 245 (April 2021), p. 2. A person is in student status if they are between the ages of 18 and 40, enrolled half-time or more in a vocational, trade, business, or technical school which requires a high school diploma or equivalency, or a college or university offering degree programs. BEM 245, p. 4. Petitioner's son is enrolled in college but is only taking three credit hours and therefore is not a full-time student. He is considered a FAP group member and Petitioner's FAP group contains five members.

The Department determines a client's eligibility for program benefits based on the group's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (November 2021), p. 1. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Income received on a weekly basis is multiplied by 4.3 to determine a standard monthly amount. BEM 505, p. 8. Income received bi-weekly is averaged and multiplied by 2.15 to achieve the standardized monthly income. *Id.* Finally, income received twice per month is added together. *Id.*

At the time of Application, Petitioner was employed full-time. Her standardized income was averaged and multiplied by 4.3 totaling [REDACTED] if all verified income is considered, which it should be since it falls within a 30-day period, January 7, 2022 through February 6, 2022. Despite this, the Department opted not to consider Petitioner's income from January 7, 2022 resulting in less income and a more favorable outcome to Petitioner. Petitioner's standardized income without the inclusion of the January 7, 2022 paycheck is [REDACTED]. After Petitioner's employment income was considered, unearned income from RSDI for Petitioner's husband and daughter is added for a total gross income of [REDACTED].

After consideration of income, the Department considers all appropriate deductions and expenses. Petitioner's group includes a Senior, Disabled, or disabled Veteran (SDV) group member; therefore, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter deduction up to the maximum of \$586.00.
- Court ordered child support and arrearages paid to non-household members.

- Standard deduction based on group size.
- 20% earned income deduction.
- Medical expense deduction

BEM 550 (January 2022), p. 1; BEM 554 (January 2022), p. 1; BEM 556 (October 2021), pp. 3-6.

As discussed above, Petitioner has standardized gross income of [REDACTED]. Therefore, she is eligible for a 20% earned income deduction of \$668.00. No evidence was presented that Petitioner has a child support or dependent care expense and the Department properly budgeted \$0.00 for these items. In addition, Petitioner has a group size of five, so she is eligible for the standard deduction of \$215.00 and that was properly budgeted. RFT 255 (October 2021), p. 1; BEM 556, p. 4. Next, Petitioner's husband is an SDV group member and is responsible for his Medicare Part B premium of \$170.10 per month. Per policy an SDV group that has a verified one-time or ongoing medical expense(s) of more than \$35 for an SDV person(s) will receive the SMD. BEM 554, p. 9. The SMD is \$165. *Id.* If the group has actual medical expenses which are more than the SMD, they have the option to verify their actual expenses instead of receiving the SMD. *Id.* In this case, Petitioner's husband's verified expense is greater than the SMD so he should have been afforded the full value of his medical expense as a deduction rather than the SMD, the Department erred in this portion of determining Petitioner's eligibility and Petitioner will be afforded the full benefit of the medical expense for purposes of this decision.

After consideration of each of these deductions, Petitioner's Adjusted Gross Income (AGI) would be calculated by subtracting each of these expenses from her gross income. Therefore, Petitioner's AGI is [REDACTED].

Once the AGI is calculated, the Department must then consider the Excess Shelter Deduction. BEM 554, p. 1; 7 CFR 273.9(d)(6). The Excess Shelter Deduction is calculated by adding Petitioner's Housing Costs to any of the applicable standard deductions and reducing this expense by half of Petitioner's AGI. BEM 556, pp. 4-7; 7 CFR 273.9(d)(6)(ii). Housing expenses include rent, mortgage, second mortgage, home equity loans, condo and maintenance fees, lot rent, other payments leading to the ownership of the home, property taxes, state and local assessments, and insurance on the structure of the home. BEM 554, p. 13-14. Utilities are addressed by the heat and utility standard deduction (H/U) which covers all heat and utility costs including cooling. BEM 554, p. 15. FAP groups that receive the H/U do not receive any other individual utility standard deductions including water, sewer, gas, trash, telephone, or non-heat electric. BEM 554, p. 15. Petitioner has a current mortgage, property tax, and homeowner's insurance expense of \$800.00 per month. She is also responsible for all utility costs; therefore, the Department properly afforded Petitioner the heat and utility standard deduction (H/U). Effective October 1, 2021, the H/U was \$559.00. RFT 255, p. 1. The expenses outlined here are the only expenses considered for purposes of calculating the FAP budget and eligibility determination. Petitioner's total housing cost is \$1,359.00 which is reduced by 50% of Petitioner's AGI [REDACTED] resulting in a negative

number. *Id.* Since Petitioner does not have an excess shelter cost, she is not eligible for an excess shelter deduction and Petitioner's AGI is equal to Petitioner's Net Income. Next, Petitioner's Net Income is compared against the income limit for a group size of five, \$2,587.00, and her net income, [REDACTED] exceeds the limit. RFT 250, p. 1. Therefore, Petitioner is not eligible for FAP benefits because her group's income exceeds the limit even when provided the full benefit of verified medical expenses as well as the lesser income.

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 Department acted in accordance with Department policy when it denied Petitioner's FAP application due to exceeding the income limit.

**DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**.

AMTM/cc



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**Amanda M. T. Marler**  
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-Wayne-18-Hearings  
BSC4-HearingDecisions  
D. Sweeney  
M. Holden  
MOAHR

**Authorized Hearing Rep.- Via USPS:**

██████████  
██████████  
██████████ MI ██████████

**Petitioner- Via USPS:**

██████████  
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