



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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██████████, MI ██████████

Date Mailed: April 8, 2022  
MOAHR Docket No.: 22-000815  
Agency No.: ██████████  
Petitioner: ██████████

**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 4, 2022 via teleconference. Petitioner appeared and represented herself. Michelle Pruitt, Family Independence Specialist, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

### **ISSUES**

1. Did MDHHS properly process Petitioner's Food Assistance Program (FAP) application?
2. Did MDHHS properly determine Petitioner's FAP benefit rate?

### **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, Petitioner applied for FAP (██████████ Application).
2. On January 7, 2022, MDHHS sent Petitioner a Notice of Case Action, indicating that she was approved for FAP benefits at a rate of \$██████████ per month for a household of one, effective January 3, 2022 to January 31, 2022, and that her FAP case would be closed February 1, 2022 (Exhibit A, pp. 10-13). The notice indicated that Petitioner's FAP case would be closed because she did not meet program requirements and she failed to verify or allow MDHHS to verify information to determine eligibility for FAP (Exhibit A, p. 11).

3. On January 7, 2022, MDHHS sent Petitioner an Appointment Notice indicating that she had a telephone appointment scheduled for Friday, January 14, 2022 at 9:00 AM (Exhibit A, p. 17).
4. On [REDACTED] 2022, Petitioner applied for FAP (February Application). MDHHS conducted an interview with Petitioner on February 22, 2022.
5. On February 22, 2022, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits at a rate of \$[REDACTED] per month for a household size of one, effective February 8, 2022 to February 28, 2022 and \$[REDACTED] per month from March 1, 2022 to January 31, 2024 (Exhibit A, pp. 8-9).
6. On [REDACTED] 2022, Petitioner filed a Request for Hearing to challenge the closure of her FAP case and her ongoing FAP benefit rate (Exhibit A, pp. 4-6).

### **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. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

#### **Application Processing**

In this case, the record shows that Petitioner applied for FAP benefits on [REDACTED] 2022. Subsequently, MDHHS alleged that it attempted to reach Petitioner by phone to complete an eligibility interview on January 7, 2022 (Exhibit A, p. 1). MDHHS reported that it could not reach Petitioner on January 7, 2022 because her phone was not in service. On January 7, 2022, MDHHS issued a Notice of Case Action, indicating that Petitioner was approved for FAP benefits from January 3, 2022 to January 31, 2022 but that her FAP case would be closed, effective February 1, 2022 (Exhibit A, pp. 10-13). The reasons given for the closure were that Petitioner did not meet program requirements and that she failed to verify or allow MDHHS to verify information to determine eligibility for FAP (Exhibit A, p. 11).

When an individual applies for FAP benefits, MDHHS is required to conduct an interview to explain the program requirements and to gather information necessary for determining the applicant's eligibility. BAM 115 (July 2021), pp. 17-18. MDHHS must conduct a telephone interview prior to approving FAP benefits. BAM 115, p. 20. The interview must be held by the 20th day after the application date in order to allow the client at least ten days to provide requested verifications by the 30th day. BAM 115, p.

24. If a client misses an interview appointment, MDHHS must send a Notice of Missed Interview advising the client that it is their responsibility to request another interview date. BAM 115, p. 24. MDHHS only sends a Notice of Missed Interview after the first missed interview. *Id.* MDHHS may not deny the application for failure to complete the scheduled interview until the 30th day after the application even if the client has returned all verifications. BAM 115, p. 19.

Here, no evidence was presented that Petitioner was given notice of the first scheduled interview on January 7, 2022. MDHHS stated that it attempted to call her on that day, not that it had sent her a notice indicating when the scheduled interview would be. On the same day that MDHHS testified that it attempted to reach Petitioner, it sent her a notice indicating that she was approved for FAP benefits for January 2022 but that her case would close, effective February 2022. Also on January 7, 2022, MDHHS sent Petitioner a Notice of Missed Appointment.

The record shows that MDHHS did not process the [REDACTED] Application pursuant to policy. First, MDHHS should have notified Petitioner when the first FAP interview would be scheduled. Then MDHHS should have sent a Notice of Missed Appointment if Petitioner missed the scheduled interview. Even if Petitioner missed the scheduled interview, MDHHS should not have denied/closed Petitioner's FAP case until 30 days after her application date which was [REDACTED], 2022. The record shows that MDHHS sent the notice indicating that her FAP case would be closed on [REDACTED] 2022, only four days after her application date. This was improper, pursuant to BAM 115, p. 19. It is unclear from the record why Petitioner was initially approved for FAP benefits for the month of January 2022.

Therefore, 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 did not process Petitioner's FAP application pursuant to Department policy.

#### **FAP Benefit Rate**

In this case, Petitioner requested a hearing to dispute her FAP benefit rate. On February 22, 2022, MDHHS approved Petitioner for FAP benefits at a rate of \$[REDACTED] per month for a household size of one, effective February 8, 2022 to February 28, 2022 and \$[REDACTED] per month from March 1, 2022 to January 31, 2024 (Exhibit A, pp. 8-9).

However, due to the COVID-19 pandemic, the federal government authorized the State of Michigan to issue Emergency Allotments (EA) to all FAP households, meaning that FAP households not receiving the maximum benefit for their group size will receive a supplement to bring their benefit amount to the maximum amount allowed for their group size. ESA Memo 2022-22 (January 2022). If the supplement does not equal or exceed \$95.00, the group will receive additional benefits up to \$[REDACTED], even if this causes them to exceed the maximum benefit amount for the group size. *Id.* While the EA are in effect, Petitioner's FAP benefit amount is the maximum for a household size of one, which was \$[REDACTED] per month as of October 1, 2021. *Id.*; RFT 260 (October 2021),

p. 1. When the EA are no longer in effect, Petitioner will receive her regular benefit amount, which MDHHS determined was \$[REDACTED] per month.

Petitioner's FAP benefit rate was based on MDHHS' determination that Petitioner's monthly income was \$[REDACTED], due to her receipt of Retirement, Survivors, Disability Insurance (RSDI) and Supplemental Security Insurance (SSI) income. MDHHS testified that Petitioner's monthly income was calculated by adding together the gross amounts of RSDI, SSI and the State SSI Payment (SSP), which were \$[REDACTED], \$[REDACTED] and \$[REDACTED] respectively. The total of the RSDI, SSI and SSP equaled \$[REDACTED]. Petitioner did not produce any evidence to dispute these amounts. No other evidence was presented regarding other income available to Petitioner. Thus, MDHHS properly determined that Petitioner's monthly income was \$[REDACTED].

After income is calculated, MDHHS must determine applicable deductions. Because Petitioner is disabled, her FAP group is considered a Senior/Disabled/Disabled Veteran (SDV) group. BEM 550 (January 2022), p. 1. SDV groups are eligible for the following deductions.

- Earned income deduction
- Dependent care expense
- Court ordered child support and arrearages paid to non-household members
- Standard deduction based on group size
- Medical expenses for SDV members that exceed \$35
- Excess shelter up to the maximum in RFT 255

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

No evidence was presented that Petitioner had earned income, dependent care expenses or court-ordered child support. MDHHS budgeted the standard deduction based on a group-size of one, which was \$177.00. RFT 255 (October 2021), p. 1. Petitioner is also entitled to deductions for verifiable medical expenses that the SDV member incurs in excess of \$35. BEM 554, p. 1. No evidence was presented that Petitioner had out-of-pocket medical expenses.

The above deductions were subtracted from Petitioner's monthly income of \$[REDACTED] to determine Petitioner's Adjusted Gross Income (AGI). The record shows that MDHHS properly determined that Petitioner's AGI was \$[REDACTED].

Next, MDHHS was required to determine the excess shelter deduction. MDHHS stated that Petitioner had an excess shelter deduction of \$0. MDHHS stated that it considered Petitioner's verified housing expenses of \$129.00. Petitioner disputed this amount and testified that her monthly rent was \$145.00. Petitioner stated that she did not pay utilities for heat or electricity, so she was not entitled to the heat and utility standard deduction. BEM 554, pp. 14-15. Petitioner pays for water and/or sewer separately from her rent, and therefore, MDHHS budgeted the \$100 water and/or sewer standard. *Id.*, p. 23.

MDHHS also budgeted a \$30.00 telephone standard. Based on those amounts, MDHHS determined that Petitioner's total housing expenses were \$259.00.

To determine the excess shelter deduction, 50% of the AGI is subtracted from the total shelter amount. Subtracting 50% of Petitioner's AGI, or \$349.00, from Petitioner's total shelter amount of \$259.00 equals a negative number. Therefore, Petitioner is not eligible for the excess shelter deduction.

Petitioner disputed the amount that MDHHS budgeted for her housing expenses at the hearing and reported that she paid \$145.00 per month in rent. However, Petitioner is still not entitled to an excess shelter deduction using this amount. Adding together the housing expense of \$145.00, the \$100 water and/or sewer standard and the \$30.00 telephone standard, equals \$275.00. Because \$275.00 is less than 50% of Petitioner's AGI, or \$349.00, Petitioner's excess shelter deduction would still be \$0.00 using those amounts.

Finally, to determine Petitioner's net income for FAP, MDHHS subtracted the excess shelter deduction of \$0.00 from Petitioner's AGI of \$[REDACTED] which equals \$[REDACTED]. An individual with a net income of \$[REDACTED] and a FAP group of one is entitled to receive \$[REDACTED] per month in FAP benefits. RFT 260 (October 2021), p. 5.

Therefore, 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 determined Petitioner's FAP benefit rate for February 8, 2022 ongoing.

### **DECISION AND ORDER**

Accordingly, MDHHS' decision is **AFFIRMED** in part and **REVERSED** in part. MDHHS' determination regarding Petitioner's FAP benefit rate from February 8, 2022 ongoing is **AFFIRMED**. MDHHS' decision to close Petitioner's FAP case in January 2022 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 application;
2. Reprocess the application and recalculate the FAP budget from January 3, 2022 to February 7, 2022;
3. If Petitioner is eligible for benefits, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from January 3, 2022 to February 7, 2022;

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-15-Hearings  
M. Holden  
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MOAHR

**First-Class Mail Recipient:**

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