



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 13, 2022
MOAHR Docket No.: 22-000829
Agency No.: ██████████
Petitioner: ██████████ ██████████

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 7, 2022. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Princess Ogundipe, Eligibility Specialist.

ISSUES

1. Did MDHHS timely process Petitioner's Food Assistance Program (FAP) expedited application?
2. Did MDHHS properly calculate Petitioner's FAP budget to determine her monthly FAP amount?

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 submitted an expedited application for FAP benefits. (Exhibit A, pp. 6-13). Petitioner reported that:
 - a. Her household was a group size of five, with no Senior, Disabled, or Disabled Veteran (S/D/V) group members.
 - b. Petitioner receives approximately \$██████████ per week in child support for one child.
 - c. Petitioner is self-employed but currently laid off.

- d. Petitioner pays \$2,800.00 per year in property taxes and \$130.00 per month in homeowner's insurance.
2. Petitioner submitted to MDHHS income records from self-employment, reporting that she earned:
 - a. November 2021: \$ [REDACTED].
 - b. December 2021: \$ [REDACTED].
 - c. January 2022: \$ [REDACTED].

(Exhibit A, p. 14)

3. Petitioner receives in child support for one child monthly:
 - a. November 2021: \$ [REDACTED].
 - b. December 2021: \$ [REDACTED].
 - c. January 2022: \$ [REDACTED].

(Exhibit A, pp. 15-17)

4. On January 28, 2022, Petitioner was interviewed by MDHHS as required by the application process.
5. On [REDACTED] 2022, MDHHS issued a Notice of Case Action to Petitioner informing her that she was eligible for FAP benefits in the amount of \$ [REDACTED] monthly for a group size of five, effective February 1, 2022 (Exhibit A, pp. 20-29).
6. On [REDACTED], 2022, MDHHS received a timely submitted hearing request from Petitioner regarding the delay in processing her expedited FAP application and disputing the monthly amount of FAP benefits she is eligible to receive (Exhibit A, p. 3).

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 the delay in processing her expedited FAP application and disputing the monthly amount of FAP benefits she is eligible to receive.

On [REDACTED] 2022, Petitioner submitted an expedited application for FAP. MDHHS confirmed that the application was submitted as, and considered, an expedited application. Expedited applications have a shorter standard of promptness and fewer verification requirements to determine FAP eligibility than are normally required. BAM 117 (January 2020), p.1. FAP groups entitled to expedited service must have a Bridge card and access to their benefits no later than the seventh calendar day following the date of application. BAM 117, p. 2. Reasonable effort must be made to verify the client's residency, income or lack of income, assets, and all other eligibility factors. FAP benefits cannot be delayed beyond the expedited standard of promptness solely because these eligibility factors (other than identity) have not been verified. BAM 117, p. 3. The standard of promptness will be extended to 29 days following the date of the expedited application if the FAP group is at fault for not submitting a completed application form, provided verification of identity, or completed the scheduled interview. BAM 117, p. 4. In this case, Petitioner was interviewed by MDHHS on January 28, 2022, two days after her application was submitted. MDHHS testified Petitioner submitted income information on February 7, 2022 and speculated that was the reason for the delay in her application being certified. However, policy only requires that verification of identity, a completed application, and a completed interview be completed within 7 days in order to certify an expedited FAP application. Since those requirements were completed in Petitioner's case, she should have been issued a Bridge card and had access to her benefits no later than 7 days after her application was submitted. Therefore, MDHHS failed to act in accordance with policy in processing Petitioner's expedited FAP application.

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 reported that she is self-employed. 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 prospects 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 by focusing on the self-employment income Petitioner received in November and December 2021, and January 2022 (see Exhibit A, p. 14). MDHHS calculated that Petitioner receives \$[REDACTED] monthly in self-employment income. MDHHS testified that they had no explanation for how Petitioner's self-employment income was calculated and conceded it was not calculated correctly. Petitioner testified that she lost necessary equipment to conduct her business and feels that November 2021 to January 2022 income records are no longer indicative of the income Petitioner is receiving. MDHHS advised Petitioner to submit update verification of her income to be used in prospecting her self-employment income. 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.

MDHHS determined that Petitioner receives \$[REDACTED] in monthly unearned income from child support payments. Department policy requires that that child support payments Petitioner received in the past three calendar months be averaged unless changes are expected. BEM 505 (July 2021), p. 4. In this case, Petitioner confirmed child support amounts in the records MDHHS has are accurate (see Exhibit A, pp. 15-17). MDHHS testified that they concede that they erred in how they calculated Petitioner's monthly unearned income. MDHHS should have averaged the amount Petitioner received November 2021-January 2022, which would equal \$[REDACTED] in monthly unearned income. MDHHS could not provide an explanation as to why they calculated \$[REDACTED] in monthly unearned income. Therefore, MDHHS failed to act in accordance with policy in calculating Petitioner's unearned income.

No other income was reported by Petitioner or factored into the budget by MDHHS.

In determining Petitioner's FAP eligibility, MDHHS factored a benefit group size of five. Petitioner confirmed the benefit group size.

MDHHS testified that it calculated Petitioner's housing expenses from her report of \$2,800.00 in annual property taxes, \$130.00 in monthly homeowner's insurance, and responsibility for paying utilities. Petitioner confirmed her housing expenses. Dividing Petitioner's reported property taxes by 12 and adding the amount to the reported monthly insurance results in \$363.33 in monthly housing expenses. Petitioner was credited with a standard heating/utility (h/u) credit of \$559.00. RFT 255 (October 2021) p. 1. Generally, the h/u credit covers all utility expenses and is the maximum credit available. Therefore, MDHHS properly calculated Petitioner's housing expenses.

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 failed to timely process Petitioner's expedited FAP application and when it calculated Petitioner's FAP budget and determined Petitioner to be eligible for \$ [REDACTED] 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 [REDACTED] 2022 expedited application for FAP benefits;
2. Recalculate Petitioner's FAP budget consistent with this decision;
3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED] 2022 ongoing;
4. Notify Petitioner of its decision in writing.

DN/mp



Danielle Nuccio
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-18-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

First-Class Mail Recipient:

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