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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: May 9, 2022  
MOAHR Docket No.: 22-001001  
Agency No.: ██████████  
Petitioner: ██████████ ██████████

**ADMINISTRATIVE LAW JUDGE: Christian Gardocki**

**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 via telephone conference line on May 4, 2022. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Antarah Walker, specialist.

**ISSUE**

The issue is whether MDHHS properly denied Petitioner’s application 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 ██████████ 2021, Petitioner applied for FAP benefits and reported a household including her children, ██████████ ██████████ (hereinafter, “Child1”) and ██████████ ██████████ (hereinafter, “Child2”). Petitioner also reported monthly housing expenses of \$208.33 and a heat obligation. Exhibit A, pp. 6-11.
2. In September 2021, Petitioner received biweekly income of \$ ██████████ and \$ ██████████ from employment.
3. As of September 2021, Child2 received \$ ██████████ in monthly gross Retirement, Survivors, Disability Insurance (RSDI).
4. As of September 2021, Petitioner had no child support, dependent care, or reported medical expenses.

5. On [REDACTED] 2021, MDHHS determined Petitioner to be ineligible for FAP benefits due to excess income based on a benefit group of two persons.
6. On March 4, 2022, Petitioner requested a hearing to dispute the denial of FAP benefits.

### **CONCLUSIONS OF LAW**

The 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 the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. FAP policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a denial of FAP benefits. Exhibit A, pp. 3-5. Petitioner applied for FAP benefits on September 20, 2021. Exhibit A, pp. 6-11. A Notice of Case Action dated December 29, 2021, stated that Petitioner's FAP application was denied due to excess net income.<sup>1</sup> Exhibit A, pp. 12-15.

BEM 556 outlines the factors and calculations required to determine a client's net income, Group size, countable monthly income, and relevant monthly expenses each factor into a client's net income. MDHHS presented a FAP budget listing most relevant calculations and budget factors. Exhibit A, p. 21. During the hearing, all relevant budget factors were discussed with Petitioner.

Petitioner reported a household that included Child1 and Child2: a household of three persons. MDHHS factored a group size of two persons in determining Petitioner's FAP eligibility. The denial notice stated that Child1 was not included because he did not live with Petitioner.

FAP group composition is established by determining the following: who lives together, the relationship(s) of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. BEM 212 (January 2017) p. 1. Parent and their children 22 years and younger are members of the same FAP group. *Id.*

During the hearing, a specialist checked an interview guide and comments associated with Petitioner's case to determine why Child1 was an excluded member. After the check, MDHHS had no explanation as to why Child1 was excluded from Petitioner's FAP group.

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<sup>1</sup> Petitioner expressed displeasure that MDHHS waited over three months to process her application. Indeed, the standard of promptness for non-expedited FAP applications is 29 days. BAM 115 (January 2021) p. 15.

Given the evidence, MDHHS improperly determined Petitioner's FAP eligibility. For purposes of simplifying the remaining analysis, the remaining analysis will accept that Petitioner's FAP group is only two persons.

MDHHS factored \$[REDACTED] in unearned income in determining Petitioner's FAP eligibility. It was not disputed that Child2 received \$[REDACTED] in gross monthly RSDI. For FAP benefits, gross RSDI is countable. BEM 503 (April 2019) p. 29. Petitioner's group's unearned income of \$[REDACTED] is countable in determining FAP eligibility.

MDHHS calculated an employment income of \$[REDACTED] for Petitioner's group. Petitioner disputed the income amount after initially acknowledging it as correct.

For FAP benefits, MDHHS generally counts gross wages.<sup>2</sup> BEM 501 (July 2021) p. 7. For non-child support income, MDHHS is to use past income to prospect income for the future unless changes are expected. BEM 505 (November 2021) p. 6. MDHHS is to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. *Id.* Stable or fluctuating biweekly employment income is converted to a monthly amount by multiplying the average income by 2.15. *Id.*, p. 8.

MDHHS credibly testified that Petitioner received gross biweekly wages of \$[REDACTED] on September 3, 2021, and \$[REDACTED] on September 17, 2021.<sup>3</sup> Multiplying the average biweekly wages by 2.15 results in countable employment income of \$[REDACTED]: the same amount calculated by MDHHS. Applying a 20% credit for timely reported income results in countable employment income of \$[REDACTED] (dropping cents). Adding Petitioner's group's unearned income to the employment income results in a total countable income of \$[REDACTED].

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2015), p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses: childcare, excess shelter (housing and utilities) up to a capped amount and court-ordered child support and arrearages paid to non-household members (see *Id.*). For groups containing SDV members, MDHHS additionally considers an uncapped excess shelter expense and medical expenses above \$35 for each SDV group member(s).

Petitioner's testimony acknowledged that she did not have child support or dependent care expenses. Petitioner also acknowledged not reporting any medical expenses to MDHHS.

The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. Petitioner's FAP benefit group size justifies a standard

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<sup>2</sup> Exceptions to using gross wages include the following: earned income tax credits, flexible benefits, striker earnings, student disregards, and census worker earnings. BEM 501 (July 2017), p. 7. None of these exceptions apply to the present case.

<sup>3</sup> Petitioner incorrectly, but reasonably, thought that MDHHS counted her wages from December 2021 because the hearing packet included only those pay documents. Exhibit A, pp. 16-17.

deduction of \$167 (see RFT 255). The standard deduction and countable non-shelter expenses are subtracted from countable monthly income to calculate the group's adjusted gross income. Subtracting the standard deduction (\$167) and countable non-shelter expenses (\$0) from Petitioner's countable income (\$██████) results in an adjusted gross income of \$██████.

Petitioner's application reported monthly housing expenses of \$208.33.<sup>4</sup> MDHHS credited Petitioner with a standard heating/utility (h/u) credit of \$537. RFT 255 (January 2020) p. 1. Generally, the h/u credit covers all utility expenses and is the maximum credit available.<sup>5</sup> Adding Petitioner's housing and utility credits results in a total shelter obligation of \$745 (dropping cents)

MDHHS only credits FAP benefit groups with an "excess shelter" expense. The excess shelter expense is calculated by subtracting half of Petitioner's adjusted gross income from Petitioner's total shelter obligation. Petitioner's excess shelter amount is \$0.

The FAP benefit group's net income is determined by subtracting the excess shelter expense from the group's adjusted gross income; doing so results in \$██████ in net income for Petitioner's group. The net income limit for a two-person group from September 2021 was \$1,437. RFT 250 (October 2020) p. 1.

Given the evidence, MDHHS erred in determining Petitioner's FAP eligibility based on an improper group size, though no other errors were discovered. As a remedy, Petitioner is entitled to a reprocessing of FAP eligibility using the proper group size of three persons.<sup>6</sup>

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's application for FAP benefits. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reregister Petitioner's FAP application dated ██████████ 2021;
- (2) Reprocess Petitioner's application subject to the finding that MDHHS failed to establish that a proper benefit group was factored; and
- (3) Issue notice and benefit supplements, if any, in accordance with policy.

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<sup>4</sup> Petitioner initially disputed housing expenses but relented after seeing her reporting on her application. Also, MDHHS credibly testified that Petitioner reported annual property taxes of \$2,500 (an average of \$208.33 per month) during an interview.

<sup>5</sup> MDHHS allows additional credits for "actual utility expenses". Such expenses are only allowed for utility installation charges, water well installation and maintenance, and septic installation and maintenance. BEM 554 (October 2019) p. 15. There was no evidence of applicable exceptions.

<sup>6</sup> The net income limit for a group size of three persons is \$1,810. RFT 250 (October 2020) p. 1. Thus, Petitioner appears ineligible even when factoring a proper group size. However, this conclusion is for MDHHS to make.

The actions taken by MDHHS are **REVERSED**.

CG/mp



**Christian Gardocki**  
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-57-Hearings  
D. Sweeney  
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**First-Class Mail Recipient:**

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