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GOVERNOR

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

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Date Mailed: April 29, 2022
MOAHR Docket No.: 22-001406
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 April 25, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) did not participate in the hearing despite being given at least 15 minutes from the scheduled time to call.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility.

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 January 20, 2022, Petitioner submitted to MDHHS redetermination documents reporting her children, ██████████ (hereinafter, "Son") and ██████████ (hereinafter, "Daughter") as household members. Pre-printed income information listed unearned income for Petitioner of \$██████ paid irregularly.
2. As of January 2022, Petitioner received \$██████ in gross monthly Retirement, Survivors, Disability Insurance (RSDI).
3. As of January 2022, Son received \$██████ in gross monthly RSDI.

4. As of January 2022, Daughter received \$[REDACTED] in gross monthly employment income.
5. As of January 2022, Petitioner's household had no child support, dependent care, or medical expenses.
6. As of January 2022, Petitioner had a monthly rent obligation of \$500 which included all utilities except telephone.
7. On 1/20/22, Petitioner submitted to MDHHS pension documentation indicating a gross income of \$[REDACTED].
8. On February 25, 2022, MDHHS terminated Petitioner's FAP eligibility effective February 2022 due to an excess net income of \$[REDACTED].
9. On March 24, 2022, Petitioner requested a hearing to dispute the termination of FAP benefits.

CONCLUSIONS OF LAW

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 to dispute a termination of FAP benefits. Exhibit A, p. 4. A Notice of Case Action dated February 25, 2022, stated that Petitioner's FAP eligibility would end February 2022 due to excess net income. Exhibit A, pp. 23-27.

BEM 556 outlines the factors and calculations required to determine a client's net income for FAP eligibility. Net income factors group size, countable monthly income, and relevant monthly expenses. MDHHS's hearing packet included budget pages listing net income calculations for Petitioner's previous and updated FAP eligibility. Exhibit A, pp. 14-19. During the hearing, all relevant budget factors were discussed with Petitioner.

Petitioner returned redetermination documents on January 20, 2022, reporting a household that included herself, Son, and Daughter. Exhibit A, pp. 5-9. MDHHS factored Petitioner's FAP eligibility based on those three persons.¹

¹ See BEM 212 for policies on determining group size for FAP benefits.

MDHHS factored a monthly employment income of \$[REDACTED] for Daughter; Petitioner did not dispute the total. Applying a 20% credit for timely reported employment income results in a countable employment income of [REDACTED] (dropping cents).

MDHHS factored \$[REDACTED] in unearned income for Petitioner's benefit group. It was not disputed that Petitioner and Son received \$[REDACTED] and \$[REDACTED] in monthly RSDI, respectively. For FAP benefits, gross RSDI is countable. BEM 503 (April 2019) p. 29. Petitioner did not dispute \$[REDACTED] of the unearned income factored by MDHHS; she only disputed the remaining \$[REDACTED].

MDHHS did not participate in the hearing to state how it calculated the remaining \$1,072 in unearned income on Petitioner's case. Petitioner submitted to MDHHS a document verifying pension income of \$[REDACTED]. Exhibit A, p. 12. For FAP, MDHHS counts the gross amount of retirement income. *Id.* BEM 503 (April 2019) p. 29. Presumably, MDHHS interpreted Petitioner's submission as proof of gross monthly pension income of \$[REDACTED].

Petitioner testified that she receives an annual gross pension payment of \$[REDACTED]. When income is received in one month but is intended to cover several months, MDHHS is to establish the monthly average by dividing the income by the number of months it covers. BEM 505 (November 2021) p. 5. Dividing Petitioner's gross annual pension by 12 would result in countable monthly pension income of \$[REDACTED] (dropping cents): a significant difference from the \$[REDACTED] budgeted by MDHHS.

MDHHS should have been aware of the possibility of Petitioner's pension being paid annually based on the Redetermination submitted by Petitioner. The form included pre-printed monthly income of \$[REDACTED] paid irregularly. Exhibit A, p. 7. Though the amount does not match the \$[REDACTED] that would be budgeted if the pension was paid annually, it is much closer than the \$[REDACTED] in monthly pension income budgeted by MDHHS.

Petitioner's testimony concerning the frequency of her pension income was undisputed. It was also credible given that a monthly pension payment of \$[REDACTED] seems abnormally high. However, Petitioner's testimony was also unverified. Thus, no finding can be made concerning the income other than MDHHS failed to establish that it was properly counted as monthly income. As a remedy, Petitioner is entitled to a reprocessing of FAP eligibility.

Only for purposes of simplifying the remaining budget analysis, it will be accepted that MDHHS properly calculated Petitioner's pension income to be \$[REDACTED] per month. Adding Petitioner's pension income to the household RSDI of \$[REDACTED] results in a total unearned income of \$[REDACTED]. Adding the countable employment income of \$[REDACTED] 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 considers an uncapped excess shelter expense and the 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 for her household. Petitioner also acknowledged not having medical expenses.

Petitioner's FAP benefit group size justifies a standard deduction of \$177 (see RFT 255). The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction and countable expenses are subtracted from the countable monthly income to calculate the group's adjusted gross income. Subtracting the standard deduction and non-shelter expenses from the group's countable income results in an adjusted gross income of \$[REDACTED].

MDHHS credited Petitioner with housing costs of \$500 and a standard \$30 telephone credit (see RFT 255). Petitioner's testimony did not dispute the housing costs or utility credit. Adding Petitioner's housing and utility expenses results in a total shelter obligation of \$530

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 \$[REDACTED] in net income for Petitioner's group. The net income limit for a group size of three persons is \$1,830. Because Petitioner's group's income exceeded the income limit, MDHHS properly terminated Petitioner's FAP eligibility but for the earlier discussed failure to establish that Petitioner's pension income was properly calculated.

DECISION AND ORDER

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

- (1) Redetermine Petitioner's FAP eligibility beginning February 2022 subject to the finding that MDHHS failed to establish that Petitioner's pension income was properly calculated; and
- (2) Issue notice and benefit supplements, if any, in accordance with policy.

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-Oakland-District-IV-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

First-Class Mail Recipient:

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