



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: June 1, 2022  
MOAHR Docket No.: 22-001569  
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 May 5, 2022. Petitioner appeared for the hearing and represented himself. Huda Qandah facilitated interpreting the hearing for Petitioner for the Arabic language. Alycia Duncan, Assistant Payments Worker, represented MDHHS.

At the hearing, the 33-page hearing packet for case number ██████████ was entered into evidence as MDHHS's Exhibit A.

The hearing was not completed on May 5, 2022 and good cause was established to continue the hearing in order to allow the parties to complete their case presentations. On May 10, 2022, the undersigned Administrative Law Judge (ALJ) issued an Order for Continuance and Notice of Continued Telephone Hearing, scheduling a continued hearing for May 26, 2022. The second day of hearing commenced as scheduled on May 26, 2022. Petitioner appeared for the hearing and represented himself. Huda Qandah facilitated interpreting the hearing for Petitioner for the Arabic language. Alycia Duncan, Assistant Payments Worker, represented MDHHS.

At the hearing, Petitioner waived his right to receiving and reviewing the 73-page hearing packet, encompassing case numbers ██████████ and ██████████, prior to the hearing and the packet was entered into evidence as MDHHS's Exhibit B.

The record closed at the conclusion of the hearing on May 26, 2022.

### **ISSUES**

1. Did MDHHS properly close Petitioner's Food Assistance Program (FAP) case number [REDACTED] for failure to submit self-employment information?
2. Did MDHHS properly deny Petitioner's FAP application for case number [REDACTED] 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. Under case number [REDACTED], Petitioner was an active recipient of FAP.
2. On January 24, 2022, MDHHS issued a Verification Checklist to Petitioner requesting that he submit proof of his self-employment income by February 3, 2022 (Exhibit B, pp. 45-47).
3. On February 4, 2022, MDHHS issued a Notice of Case Action to Petitioner informing him that his FAP case [REDACTED] was closed for failure to provide the proof requested in the Verification Checklist (Exhibit A, pp. 30-33).
4. On [REDACTED] 2022, MDHHS received a new application from Petitioner for FAP for a three-person group, consisting of his wife, minor child, and himself (Exhibit B, pp. 11-17).
5. On March 8, 2022, MDHHS issued a Verification Checklist to Petitioner requesting that he submit proof of his self-employment income by March 18, 2022 (Exhibit A, pp. 6-7). MDHHS provided Petitioner with a Self-Employment Income and Expense Statement form to complete (Exhibit A, pp. 21-22; Exhibit B, pp. 48-50).
6. On March 10, 2022, Petitioner submitted his 2021 tax return to MDHHS as proof of his self-employment income (Exhibit B, pp. 51-61).
7. On March 10, 2022, MDHHS merged Petitioner's FAP application and case with his wife's FAP case, under case number [REDACTED].
8. On March 31, 2022, Petitioner submitted pay information for his self-employment with [REDACTED] (Employer 1) and [REDACTED] (Employer 2) (Exhibit B, pp. 23, 24, 41, 62-73).
9. On March 31, 2022, MDHHS issued a Notice of Case Action for case number [REDACTED] informing Petitioner that his FAP application was denied due to excess income (Exhibit B, pp. 20-21).
10. On April 6, 2022, MDHHS received Petitioner's hearing request, for both case numbers, disputing that he failed to provide proof of self-employment income and that he has excess income (Exhibit B, pp. 7-10).

## **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 requested a hearing regarding the closure of FAP case [REDACTED] and the denial of his FAP application in case [REDACTED].

### **[REDACTED]-FAP case closure**

Petitioner was an ongoing recipient of FAP in case [REDACTED]. Petitioner reported to MDHHS on or about January 18, 2022 that his self-employment had increased. MDHHS then issued a Verification Checklist (VCL) to Petitioner on January 24, 2022, requesting that he submit proof of his self-employment (see Exhibit B, pp. 45-47). Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (January 2022), p. 1. The client must obtain required verification, but the local office must assist if they need and request help. BAM 130, p. 3. An individual's FAP case will be denied once the VCL due date has passed. Eligibility for FAP will be determined based on the individual's compliance date if they return required verifications. BAM 130, p. 7.

MDHHS requested this information be submitted by February 3, 2022 so that they could assess Petitioner's ongoing eligibility for FAP. Petitioner acknowledges that he did not submit the requested self-employment verifications by the due date. Petitioner testified that he submitted his 2021 tax return on March 10 and documentation of January and February pay records on March 31, 2022 and April 1, 2022. No evidence was presented that Petitioner requested assistance from MDHHS in obtaining the verifications requested or that he requested an extension to submit the requested information. As stated in policy, MDHHS must receive verifications for a reported change that affects eligibility or benefit level, such as a change in self-employment income. Since Petitioner did not submit his self-employment information requested in the VCL timely, MDHHS acted in accordance with policy in closing FAP case [REDACTED].

**██████████-FAP application denied**

Following the closure of case ██████████, Petitioner applied for FAP on ██████████ 2022. When MDHHS received this application, they realized that Petitioner's wife has an active Medicaid case under household case number ██████████. MDHHS then filed, or merged, Petitioner's new application under his wife's household case number. Since Petitioner and wife live together and are married, they are mandatory FAP group members. BEM 212 (January 2022), p. 1. Therefore, MDHHS acted properly in filing Petitioner's March FAP application under case ██████████.

As discussed above, MDHHS received Petitioner's self-employment income information. MDHHS issued a Notice of Case Action on March 31, 2022, informing Petitioner that his FAP application was denied due to excess income. Petitioner disputes how MDHHS calculated his income amount to rely upon this decision.

A non-categorically eligible, non-S/D/V FAP group (those without a member that is a senior, disabled, or disabled veteran) must have income below the gross and net income limits. At the time of Petitioner's application, the gross income limit for a group size of three was \$2,379.00. RFT 250 (October 2021), p. 1. Petitioner's March 4, 2022 application was denied because MDHHS determined that his gross income from self-employment was in excess of this limit.

Petitioner's work for Employer 1 and Employer 2 is considered self-employment. 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 (October 2019), pp. 1-3. 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 prospectively 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. 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.

MDHHS testified that they believed that Petitioner's 2021 tax return was insufficient self-employment income. While this resulted in a delay in processing Petitioner's application, ultimately MDHHS error was harmless as they received 2022 income information to rely upon in determining Petitioner's gross income amount. Petitioner submitted pay information for his self-employment with Uber (Employer 1) and Lyft (Employer 2) for January through February 2022, which would be most indicative of future income (see Exhibit B, pp. 23, 24, 41, 62-73). MDHHS testified that they relied upon the income information received from Employer 1 and Employer 2, then averaged the amount that Petitioner receives to determine his monthly gross self-employment income to be

\$[REDACTED]. Petitioner argues that MDHHS did not take into account expenses that he must spend from his net payout from each Employer (for instance, the cost of gas and vehicle maintenance). MDHHS stated that they believed that the amount listed on each paystub as “expenses, fees, and tax” took into account all of Petitioner’s self-employment expenses. However, Petitioner explained that is the money that goes directly to Employer and does not factor into his out of pocket expenses. It is noted that on the paystubs provided, the net payout is listed as “the amount that is paid into your bank account”—meaning, the amount that Petitioner receives then must pay for his expenses to maintain his self-employment from. Petitioner does not dispute that he did not provide MDHHS additional information regarding expenses, but states that no one had asked for any information to calculate his income amount. Policy requires that MDHHS seek input from the client to establish an estimate of self-employment income. It does not appear that there was a collaboration in this case between Petitioner and MDHHS to best determine Petitioner’s self-employment income for the future and whether he would be eligible for FAP benefits. MDHHS must calculate Petitioner’s self-employment income, after taking into account allowable expenses, to determine if he does exceed the gross income limit for a group size of three. Therefore, MDHHS has failed to act in accordance with policy in denying Petitioner’s FAP application.

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 act in accordance with Department policy when it denied Petitioner’s FAP application due to excess income.

### **DECISION AND ORDER**

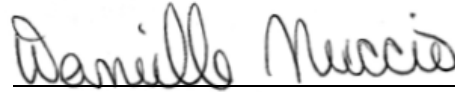
Accordingly, MDHHS’ decision is **REVERSED**.

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. Reregister [REDACTED] 2022 FAP application;
2. Reprocess the application/recalculate the FAP budget for March 4, 2022 ongoing;
3. If Petitioner is eligible for benefits, issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from;

4. Notify Petitioner of its decision in writing.

DN/mp



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**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-17-hearings  
D. Sweeney  
M. Holden  
MOAHR  
BSC4

**First-Class Mail Recipient:**

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