



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: May 11, 2022
MOAHR Docket No.: 22-001570
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 and represented herself. Petitioner’s husband, ██████████ ██████████, testified as a witness on her behalf. A representative from the Department of Health and Human Services (MDHHS) did not appear for the hearing and the hearing was held in the absence of the Department.

Petitioner agreed to the admission of the 29-page hearing packet submitted by MDHHS prior to the hearing. These documents were admitted into evidence as Exhibit A.

ISSUE

Did MDHHS properly deny Petitioner’s ██████████ 2022 Food Assistance Program (FAP) application 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. On ██████████ 2022, MDHHS received a FAP application from Petitioner for a group size of six, consisting of her husband, ██████████ ██████████ (Spouse), four foster children, and herself. Petitioner’s group contains a senior/disabled/veteran (S/D/V) member (Exhibit A, pp. 10-22).
2. On ██████████ 2022, MDHHS informed Petitioner that her application for FAP was denied, stating that her case was not eligible due to excess income (Exhibit A, pp. 7-9).

3. On April 7, 2022, MDHHS received a timely hearing request from Petitioner disputing MDHHS' denial of her FAP application due to excess income (Exhibit A, pp. 3-6).

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. 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 applied for FAP benefits for her household. Petitioner's application was denied due to excess income. Petitioner argues that her and Spouse's income should not be considered when budgeting for the household since her group includes four foster children. A MDHHS representative did not participate in the hearing. The hearing summary prepared by MDHHS was read into the record, stating that

Customer is disputing food assistance determination. Mrs. [REDACTED] applied for food assistance on [REDACTED] 2022, and the food assistance was determined for the group using all countable income for the children and foster parents. It appears this was a discrepancy for the foster parents based on the fact that on or about 9/22/21, [REDACTED], [REDACTED], [REDACTED], and [REDACTED] were placed in the home of Mr. and Mrs. [REDACTED], and at that time, Mr. and Mrs. [REDACTED] were given the EBT card of the children's natural mother and told they could use said benefits. On or about 12/31/21, the children's natural mother had her case closed and benefits terminated due to the children no longer being in her care. It was explained to Mr. and Mrs. [REDACTED], the benefits should have been terminated upon initial removal of the children from the mother's care. Mr. and Mrs. [REDACTED] receive \$[REDACTED] monthly in Foster Child Care payments along with their own SSA income. Per policy, all income must be included for the group, and if the foster children are excluded, they would not be eligible for FAP as a separate group and the foster income would not be income to the group.

The Federal Regulation which governs FAP benefits in Michigan provides:

Individuals placed in the home of relatives or other individuals or families by a Federal, State, or local governmental foster care program must be considered to be boarders. *They cannot participate in the Program independently of the household providing the foster care services.* Such foster care individuals may participate, along with a spouse or children living with them, as members of the household providing the foster care services, only at the request of the household providing the foster care.

7 CFR 273.1(b)(4) (emphasis added).

Furthermore, policy provides:

The FAP group may choose to include or exclude a foster child whose foster parent is a group member. If excluded, *the foster child is not eligible for FAP as a separate group,* and the foster care payment is not income to the group.

BEM 212 (January 2022), p. 2 (emphasis added).

Based upon both Federal Regulations and policy, Petitioner's foster children are only eligible for FAP benefits if they are included in the same group as the foster parent (Petitioner). The children cannot have a FAP case independent of or separate from their foster parents. Therefore, MDHHS properly included Petitioner and Spouse as part of the FAP group and, under BEM 500 (July 2020), pp. 1–5, properly included their income as part of the household's budget when determining eligibility for FAP benefits. Therefore, MDHHS acted in accordance with policy when including Petitioner and Spouse, and their income, in the FAP group.

Petitioner's FAP application was denied due to excess income. MDHHS determines a client's eligibility for program benefits based on the client's actual income and/or prospective 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 factored that Petitioner's group's unearned income was \$██████████ per month. MDHHS presented no supporting documentation as to the calculation of this amount. Petitioner testified that she receives \$██████████ per month in Retirement, Survivors, and Disability Insurance (RSDI) and Spouse receives \$██████████ per month in RSDI. RSDI is a federal benefit administered by the Social Security Administration that is available to retired and disabled individuals, their dependents, and spouses of deceased workers. MDHHS counts the gross benefit amount as unearned income. BEM 503 (April 2021), p. 29. Additionally, Petitioner receives \$██████████ per month in income from her pension.

Spouse receives \$ [REDACTED] per month in income from his pension. Retirement income from private pensions, military pensions, and state and local government pension are also countable unearned income. BEM 503, p. 29. Petitioner testified that she receives \$ [REDACTED] monthly as a foster care payment for the four children. MDHHS counts these payments as the unearned income of the foster child who has a FAP program request status of yes, since a foster parent may choose whether or not to request FAP on behalf of a foster child. When FAP program request status for foster child is no, MDHHS does not consider the child's needs or income in the FAP eligibility determination. BEM 503, p. 5. Petitioner elected to include the four children in her household FAP group; therefore, the foster care payment must be included as household unearned income. The total of the three kinds of unearned income for Petitioner's household is \$ [REDACTED] monthly. MDHHS did not participate in the hearing to testify as to the calculation of \$ [REDACTED] in unearned income that they relied upon in determining Petitioner's household budget.

For groups containing S/D/V members, such as Petitioner's, MDHHS considers the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical deduction.

BEM 554 (January 2020), p. 1; BEM 556 (January 2020), p. 3.

MDHHS factored no medical, child support, or dependent care expenses for Petitioner's FAP eligibility. Petitioner did not dispute these expenses. Thus, MDHHS properly counted the group's non-shelter expenses to be \$0.00.

The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. Petitioner's six-person FAP benefit group size justifies a standard deduction of \$246.00. RFT 255 (October 2021) p. 1. The standard deduction and countable non-shelter expenses are subtracted from the countable monthly income to calculate the group's adjusted gross income. Petitioner's adjusted gross income is calculated to be \$ [REDACTED].

Next, MDHHS is to calculate the excess shelter deduction for each household. Petitioner testified that she owns her home, pays her own utilities, and pays [REDACTED] per year in property taxes and [REDACTED] per month in homeowner's insurance. This averages to [REDACTED] per month in housing expenses. Petitioner was credited with a standard heating/utility (h/u) credit of [REDACTED]. RFT 255 (October 2021) p. 1. Generally, the h/u credit covers all utility expenses and is the maximum credit available. MDHHS only credits FAP benefit groups with an "excess shelter" expense. The excess shelter expense is calculated by subtracting half of the adjusted gross income from the total shelter obligation. Petitioner's excess shelter amount calculates to a negative number. Therefore, Petitioner's

excess shelter deduction was properly calculated at \$0.00, despite MDHHS not supporting the amount they relied upon for housing expenses.

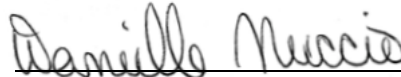
The FAP benefit group's net income is determined by subtracting the excess shelter expense from the group's adjusted gross income; doing so results in \$ [REDACTED] in net income for Petitioner's group. A chart is used to determine the proper FAP benefit issuance. RFT 260 (October 2021) p. 13. The net income limit for a group size of six is \$2,965.00. Though MDHHS calculated an incorrect net income amount, without explanation, to determine Petitioner's eligibility, Petitioner, with standard net monthly income of \$ [REDACTED], nevertheless does not pass the applicable FAP Net Income limit of \$2,965.00. Petitioner still has excess net monthly income rendering her ineligible for FAP benefits.

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 MDHHS acted in accordance with Department policy when it denied Petitioner's FAP application for a group size of six due to excess income.

DECISION AND ORDER

Accordingly, MDHHS' decision is **AFFIRMED**.

DN/ml



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

Electronic Mail Recipients:

MDHHS-Wayne-57-Hearings
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M. Holden
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