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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 24, 2022  
MOAHR Docket No.: 22-001782  
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 18, 2022. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Marjorie Scott, specialist.

**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. As of February 2022, Petitioner received FAP benefits with a benefit period certified through March 2022.
2. On March 1, 2022, Petitioner submitted a Redetermination form reporting a household of four persons including ██████████, Petitioner's daughter (hereinafter, "Daughter") who was █ years old. Petitioner also reported no medical expenses.
3. As of March 2022, Petitioner received \$██████ per month in gross Retirement, Survivors, Disability Insurance (RSDI). Petitioner additionally received \$█ in monthly child support.

4. As of March 2022, Petitioner was responsible for monthly housing costs of \$208 and a heating and/or cooling obligation.
5. As of March 2022, Petitioner had no child support or dependent care expenses.
6. On an unspecified date, MDHHS verified the following ongoing weekly gross employment income for Daughter: \$[REDACTED] on March 29, 2022, and \$[REDACTED] on April 5, 2022.
7. On April 13, 2021, MDHHS terminated Petitioner's FAP eligibility beginning April 2022 due to excess net income.
8. On April 18, 2021, Petitioner verbally requested a hearing to dispute the termination of FAP eligibility.

### **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 verbally requested a hearing to dispute a termination of FAP benefits.<sup>1</sup> Exhibit A, pp. 3-5. A Notice of Case Action dated April 13, 2022, stated that Petitioner was ineligible for FAP benefits beginning April 2022 due to excess net income. Exhibit A, pp. 7-11.

BEM 556 outlines the factors and calculations required to determine a client's net income. Net income for FAP benefits factors group size, countable monthly income, and relevant monthly expenses. The notice dated April 13, 2022, included a list of all budget factors. Exhibit A, p. 8. MDHHS also presented FAP budgets listing relevant factors and calculations. Exhibit A, pp. 14-15. During the hearing, all relevant budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of four persons. Petitioner's testimony suggested that her benefit group should be three persons, though it was unclear why. MDHHS credibly testified that Petitioner returned a Redetermination on March 1, 2022, which reported a household of four that included Daughter. Petitioner presented no valid argument supporting a group size of less than than four persons. Given the evidence, MDHHS properly factored a group size of four persons.<sup>2</sup>

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<sup>1</sup> Generally, hearing requests must be in writing. BAM 600 (March 2021). P. 2. Clients may verbally request hearing to dispute FAP eligibility. *Id.*

<sup>2</sup> See BEM 212 for policies on determining group size for FAP benefits.

MDHHS factored RSDI for Petitioner of \$█████ per month. For FAP benefits, gross RSDI is countable. BEM 503 (April 2019) p. 29. Petitioner initially insisted her RSDI was only \$█████. Petitioner eventually relented and admitted she was not sure of her RSDI. MDHHS credibly testified that a data exchange with the Social Security Administration indicated that Petitioner's RSDI was \$█████. The evidence established that Petitioner's countable RSDI was \$█████.

It was not disputed that Petitioner received \$6 in monthly child support. Child support received by the family is countable income. BEM 503 (April 2022) p. 6. Adding the child support to Petitioner's RSDI results in a total unearned income of \$█████.

MDHHS calculated employment income of \$█████.<sup>3</sup> MDHHS credibly testified that the income was based on Daughter's employment. Petitioner's testimony suggested that Daughter's income should not be counted because she buys and prepares food separately. Parents and their children under 22 years of age who live together must be in the same FAP group. BEM 212 (July 2019) p. 1. As a child to Petitioner under 22 years of age, Daughter is a mandatory group member and her income is countable.

MDHHS testified that Daughter's income was based on her first two pays received from employment: \$█████ on March 29, 2022, and \$█████ on April 5, 2022. For FAP benefits, MDHHS generally counts gross wages.<sup>4</sup> BEM 501 (July 2017), p. 7. Stable or fluctuating weekly employment income is converted to a monthly multiplying the average income by 4.3. BEM 505 (January 2021) p. 8. Multiplying Daughter's two average weekly wages by 4.3 results in a monthly income of \$2,377 (dropping cents). MDHHS issues a 20% credit for timely reported employment income which results in a countable income of \$█████ (dropping cents). Adding the countable employment income of \$█████ to the unearned income of \$█████ results in a total countable income of \$█████.

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 the medical expenses above \$35 for each SDV group member(s). Petitioner was disabled and/or aged.

Petitioner's testimony acknowledged that she did not have child support or dependent care expenses. It was not disputed that Petitioner did not report medical expenses on a

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<sup>3</sup> The FAP-OI budget presented by MDHHS inexplicably listed employment income of \$█████. However, the termination notice listed employment income of \$█████. For purposes of the analysis, the lower and more favorable income of \$█████ will be accepted as correct.

<sup>4</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.

recently submitted Redetermination form submitted to MDHHS. Thus, Petitioner established non-shelter expenses of \$0

Petitioner's FAP benefit group size justifies a standard deduction of \$208 (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 (\$208) and countable non-shelter expenses (\$0) from Petitioner's countable income results in an adjusted gross income of \$[REDACTED].

MDHHS credited Petitioner with monthly housing expenses of \$208; Petitioner did not allege additional housing expenses. MDHHS credited Petitioner with a standard heating/utility (h/u) credit of \$559. RFT 255 (January 2021) 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 \$767

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 Petitioner's group size is \$2,209. Because Petitioner's group's net income exceeds the income limit, MDHHS properly terminated Petitioner's FAP eligibility.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's FAP eligibility beginning April 2022. The actions taken by MDHHS are **AFFIRMED**.

CG/mp



**Christian Gardocki**

Administrative Law Judge

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<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.

**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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