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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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DIRECTOR

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Date Mailed: July 6, 2022
MOAHR Docket No.: 22-002416
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 June 30, 2022. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Shanika Boyd, specialist.¹

ISSUES

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

The second issue is whether MDHHS properly denied Petitioner’s State Emergency Relief (SER) application requesting energy and water assistance.

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 May 2022, Petitioner was an ongoing recipient of FAP and Medical Assistance (MA) benefits as a benefit group of one person.
2. As of May 2022, Petitioner had no child support, dependent care, or medical expenses.
3. As of May 2022, Petitioner had no housing expenses and was responsible for heating and/or cooling expenses.

¹ MDHHS’s participation began approximately 45 minutes after the scheduled hearing time.

4. On [REDACTED] 2022, Petitioner applied for SER seeking assistance with a past-due energy and water bill.
5. On an unspecified date, Petitioner reported to MDHHS that he was employed.
6. On May 17, 2022, Petitioner submitted to MDHHS pay documentation of his first weekly wages of \$[REDACTED].
7. On May 20, 2022, MDHHS terminated Petitioner's FAP eligibility due to excess income.
8. On May 20, 2022, MDHHS denied Petitioner's SER application due to excess income.
9. As of May 20, 2022, Petitioner had not reported stopped employment income to MDHHS.
10. On May 31, 2022, Petitioner requested a hearing to dispute the denial of SER, FAP benefit termination, and an unspecified action concerning MA eligibility.

CONCLUSIONS OF LAW

The MA program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MA policies are contained in the BAM, BEM, and RFT.

Petitioner requested a hearing, in part, to dispute an unspecified action concerning MA eligibility. Exhibit A, pp. 3-5. Petitioner testified that he thought that his MA eligibility ended because his FAP eligibility ended. During the hearing, MDHHS checked Petitioner's case and testified that no adverse action was taken to Petitioner's MA eligibility. Petitioner also acknowledged that he did not receive notice of an adverse action concerning MA benefits. As a result, Petitioner withdrew his dispute over MA benefits. Based on Petitioner's withdrawal, Petitioner's hearing request will be dismissed concerning MA benefits.

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 also requested a hearing to dispute a termination of FAP benefits. Exhibit A, pp. 3-5. A Notice of Case Action dated May 20, 2022, stated that Petitioner's FAP eligibility would end June 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 May 20, 2022, included a list of all budget factors. Exhibit A, p. 8. MDHHS also presented a FAP budget listing relevant factors and calculations. Exhibit A, pp. 16-17. During the hearing, all relevant budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of one person. Petitioner did not dispute the group size.²

MDHHS testified that Petitioner's income was calculated from his first weekly pay from recently started employment. Petitioner submitted to MDHHS documentation indicating receipt of \$[REDACTED] for his first weekly pay.

For FAP benefits, MDHHS generally counts gross wages.³ BEM 501 (July 2017), p. 7. For starting income, MDHHS is to use the best available information to prospect income for the benefit month. BEM 505 (November 2021) p. 8. If payments from the new source have been received, MDHHS is to use them in the budget for future months if they accurately reflect future income. *Id.* Stable or fluctuating weekly employment income is converted to a monthly income by multiplying the average income by 4.3. *Id.*

Multiplying Petitioner's weekly pay of \$[REDACTED] by 4.3 results in a monthly income of \$[REDACTED]. MDHHS issues a 20% credit for timely reported employment income which results in a countable employment income of \$[REDACTED] (dropping cents): MDHHS calculated the same income for Petitioner.

Petitioner credibly testified that he stopped employment on May 13, 2022, due to an injury. Petitioner contended that MDHHS wrongly assumed that he would continue employment after receiving his first pay. Petitioner's contention was unpersuasive as MDHHS may project a client's monthly income from initial wages. However, Petitioner also testified that he reported to MDHHS on May 16, 2022, that he stopped working. If Petitioner reported stopped wages to MDHHS on May 16, 2022, then MDHHS should not have projected wages in determining Petitioner's future FAP eligibility on May 20, 2022.

Sandwiched between Petitioner's claims of reporting stopped employment was an admission that he was unsure when he reported to MDHHS that he stopped working. If Petitioner did report stopped employment to MDHHS on May 16, 2022, he presumably

² See BEM 212 for policies on determining group size for FAP benefits.

³ 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.

would have thought to emphasize his reporting when completing his hearing request. No mention of stopped employment income was made on Petitioner's hearing request dated May 31, 2022. Exhibit A, pp. 3-5.

MDHHS credibly testified that Petitioner did not report stopped income until June 9, 2022. MDHHS also credibly testified that a Verification Checklist was sent to Petitioner the next day and that Petitioner's FAP eligibility is pending for verification of stopped income. MDHHS further testified that Petitioner was called near the due date for Petitioner to return verification to inform him that no verifications were yet received.⁴

Given the evidence, Petitioner did not report stopped income to MDHHS before May 2022. Thus, MDHHS properly calculated Petitioner's countable wages as \$[REDACTED] in terminating Petitioner's FAP eligibility.

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 having no child support, medical, or dependent care expenses. Thus, Petitioner's non-shelter expenses were \$0

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 non-shelter expenses are subtracted from the countable monthly income to calculate the group's adjusted gross income. Subtracting the standard deduction (\$177) and countable non-shelter expenses (\$0) from Petitioner's countable income (\$[REDACTED]) results in an adjusted gross income of \$[REDACTED]

MDHHS credited Petitioner with monthly housing expenses of \$0; 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.⁵ Adding Petitioner's housing and utility credits results in a total shelter obligation of \$559

⁴ During the hearing, Petitioner asked MDHHS for assistance in verifying his stopped employment.

⁵ 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.

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 \$1,074. Because Petitioner’s group’s net income exceeds the income limit, MDHHS properly terminated Petitioner’s FAP eligibility.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049. MDHHS policies are contained in the Emergency Relief Manual (ERM).

Petitioner lastly requested a hearing to dispute a denial of an SER application dated May 9, 2022. A State Emergency Relief Decision Notice dated May 20, 2022, stated that Petitioner was denied SER for energy and water due to excess income. Exhibit A, pp. 13-15.

There are no income copayments for SER-energy or water services. ERM 208 (October 2021) p. 1. With respect to income, clients are either eligible or not for SER-energy and/or water assistance. *Id.* For a group to be eligible for SER-Energy or SER-Water, the combined monthly net income that is received or expected to be received by all group members in the 30-day countable income period, cannot exceed the income standard which is based on the number of group members.⁶ *Id.* If the income exceeds the income standard limit, the SER request must be denied. *Id.*

MDHHS projected Petitioner’s income for the countable income period based on Petitioner’s receipt of initial weekly wages of \$[REDACTED] dated May 13, 2022. As of May 20, 2022 (the date of SER denial), MDHSH reasonably expected Petitioner to receive four pays of \$[REDACTED] in the 30 days following his SER application date. Thus, Petitioner income for purposes of SER is eligibility is \$2,720.

It was not disputed that Petitioner’s SER group included only himself. The SER-energy income standard limit for a one-person group is \$1,610. *Id.*, p. 8. Petitioner’s net income of \$2,720 exceeds the income limit. Thus, MDHHS properly denied Petitioner’s SER requests for energy and water services.

⁶ The 30-day countable income period or “authorization period” consists of the 30 days immediately following the date of application. State Emergency Relief Glossary (February 2017) p. 2.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner withdrew his dispute concerning MA benefits. Concerning MA benefits, Petitioner's hearing request is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's SER application for energy and water services dated [REDACTED] 2022. MDHHS also properly terminated Petitioner's FAP eligibility beginning June 2022. The actions taken by MDHHS are **AFFIRMED**.

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

Via-Electronic Mail :

DHHS
MDHHS-Wayne-17-hearings
E. Holzhausen
D. Sweeney
M. Holden
T. Bair
BSC4

Via-First Class Mail :

Petitioner
[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]