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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: August 5, 2022  
MOAHR Docket No.: 22-002759  
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 on July 27, 2022. Petitioner participated and was unrepresented. ██████████ ██████████, Petitioner’s spouse (hereinafter, “Spouse”) testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Alycia Duncan, specialist. Huda Qandah, translator from the American Chaldean Council, participated as an Arabic-English translator.

**ISSUE**

The issue is whether MDHHS properly denied Petitioner’s application for Food Assistance Program (FAP) benefits due to excess net 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, Petitioner applied for FAP benefits and reported a household including Spouse and a minor child.
2. On June 2, 2022, MDHHS requested proof of Spouse’s self-employment income from December 2021 through February 2022.
3. On an unspecified date, MDHHS received Spouse’s income documents from December 2021 through February 2022. The documents listed a total gross income for February 2022 of \$██████████ from ██████████ (hereinafter, “Employer1”) and at least \$██████████ for ██████████ (hereinafter, “Employer2”). After employer deductions, Petitioner’s net income was \$██████████ and \$██████████, respectively.

4. On ██████████ 2022, MDHHS denied Petitioner's application for FAP benefits due to excess gross income of \$█████████ for February 2022
5. On June 22, 2022, Petitioner requested a hearing to dispute the denial 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 FAP application denial. Exhibit A, pp. 3-5. Petitioner applied for FAP benefits on ██████████ 2022. A Notice of Case Action dated ██████████ 2022, stated that Petitioner's application was denied due to excess gross income. Exhibit A, pp. 13-14.

To be eligible for FAP benefits, a non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550 (January 2017) p. 1. An SDV group is one with a senior (a person over the age of 60 years), disabled, or disabled veteran. *Id.* A traditionally categorically eligible FAP group is one whose members are all Family Independence Program (FIP) and/or State Disability Assistance (SDA) and/or Supplemental Security Income recipients (SSI). BEM 213 (October 2021) p. 1. Applicants and recipients are eligible for enhanced authorization for Domestic Violence Prevention Services (DVPS); in such circumstances, categorical eligibility is established by DVPS if gross income is at or below 200% of the federal poverty level (FPL) and they meet the asset test. *Id.*

The amount of self-employment income before any deductions is called total proceeds. BEM 502 (October 2019) p. 1. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. *Id.* 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. *Id.*

For FAP benefits, MDHHS generally counts gross wages.<sup>1</sup> BEM 501 (July 2021) p. 7. For non-child support income, MDHHS is to use past income to prospect income for the future unless changes are expected. BEM 505 (November 2021) p. 6. MDHHS is to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. *Id.* MDHHS is to use income from the past 60 or 90 days

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<sup>1</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.

if the past 30 days is not a good indicator of future income, and fluctuations of income during the past 60 or 90 days appear to accurately reflect the income expected to be received in the benefit month. *Id.*

It was not disputed that Petitioner's group's only income was self-employment income from Spouse. MDHHS mailed Petitioner a VCL requesting proof of Spouse's income from December 2021 through February 2022. Exhibit A, pp. 54-56. In response, MDHHS received various income documents from Employer1 and Employer2. Exhibit A, pp. 57-86.

In factoring Petitioner's FAP eligibility, MDHHS factored Spouse's gross incomes from February 2022 of \$██████ from Employer1 and \$██████ from Employer2.<sup>2</sup> After applying the standard 25% for expenses to the total income of \$██████, MDHHS calculated a countable self-employment income of \$██████. Exhibit A, p. 14.

MDHHS contended that Petitioner was properly denied FAP benefits because the group's countable income of \$██████ exceeded the gross income limit. The gross income limit for a three-person group is \$3,660.<sup>3</sup> RFT 250 (October 2021) p. 1. MDHHS's contention was unpersuasive.

First, Petitioner provided MDHHS with proof of self-employment expenses substantially exceeding 25% of Spouse's gross income. Spouse's income documents listed respective net incomes for February 2022 of \$██████ and \$██████ from Employer1 and Employer2.<sup>4</sup> MDHHS contended net income should not be factored because the expenses were not verified; however, Petitioner's income documentation clearly listed the expenses as employer charges. Petitioner additionally submitted credit card bills and statements listing further charges for gas, phone, and insurance.<sup>5</sup> Exhibit A, pp. 91-98. The evidence established that MDHHS erred by ignoring Petitioner's self-employment expenses exceeding 25%

Secondly, MDHHS inexplicably requested three months of income, yet only considered Spouse's income from February 2022. If Spouse's income was more representative for March 2022 based on the previous three months, then MDHHS should have factored Spouse's self-employment income from December 2021 through February 2022. Indeed, Petitioner testified that Spouse's income was higher in February 2022 and suggested that a three-month period was a more accurate representation of Spouse's income.

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<sup>2</sup> Income documents from Employer2 listed gross incomes (including tips) totaling \$1125.91.

<sup>3</sup> The denial notice listed an income limit of \$2,379: an amount based on 130% of the FPL. MDHHS uses this limit because it is applied when the group's gross income exceeds 200% of the FPL. However, the 130% limit is not applied if the group's income is under 200% of the FPL.

<sup>4</sup> The total of \$██████ came from weekly incomes of \$██████, \$██████, \$██████, and \$██████ covering January 31 through February 27, 2022.

<sup>5</sup> The evidence did not establish that the credit card charges were adequate verification of self-employment expenses. However, the evidence also did not establish that MDHHS properly ignored the expenses.

Given the evidence, MDHHS improperly determined Spouse's income. Thus, the denial of Petitioner's application based on excessive gross income was improper. As a remedy, MDHHS will be ordered to reprocess Petitioner's application.

It is notable that this is the second administrative hearing decision ordering MDHHS to reprocess Petitioner's FAP application. An administrative hearing decision under docket number 22-001569 also concluded that MDHHS improperly denied Petitioner's application. Exhibit A, pp. 48-53. Thus, when processing Petitioner's application for a third time, it should ensure that Spouse's self-employment income and expenses are properly budgeted.

### **DECISION AND ORDER**

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

- (1) Reprocess Petitioner's application dated [REDACTED] 2022, subject to the finding that MDHHS improperly calculated Spouse's self-employment income and expenses; and
- (2) Issue notice and benefit supplements, if any, in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/mp



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**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  
D. Sweeney  
M. Holden  
MOAHR  
BSC4

**Via-First Class Mail :**

**Petitioner**  
[REDACTED]  
[REDACTED]  
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