



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: August 8, 2022
MOAHR Docket No.: 22-002915
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 August 3, 2022. The Petitioner was represented by [REDACTED], his adult son and group member. The Department of Health and Human Services (MDHHS) was represented by Crystal Hackney, Assistant Payments Supervisor.

ISSUES

1. Did MDHHS properly close Petitioner's Family Independence Program (FIP) case?
2. Did MDHHS properly calculate Petitioner's Food Assistance Program (FAP) budget to determine his monthly FAP amount?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing recipient of FAP and FIP for a group size of six.
2. On January 28, 2022, MDHHS issued a FAST Referred Notice to Petitioner, informing him that he must complete a Family Automated Screening Tool (FAST) within 30 days (Exhibit A, pp. 7-8).
3. On March 15, 2022, MDHHS issued a Notice of Case Action to Petitioner, informing him that his FIP case was closed for failure to complete the required

FAST. MDHHS also informed Petitioner that he was approved for \$896.00 in monthly FAP benefits for a group size of six¹ (Exhibit A, pp. 9-14).

4. On July 8, 2022, Petitioner submitted a request for hearing to MDHHS regarding the closure of his FIP case and to dispute his monthly FAP amount (Exhibit A, pp. 3-5).

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).

Family Independence Program (FIP)

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 792.10101 to R 792.10137 and R 792.11001 to R 792.11020. Rule 792.11002(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance is denied or is not acted upon with reasonable promptness, has received notice of a suspension or reduction in benefits, or exclusion from a service program, or has experienced a failure of the agency to take into account the recipient's choice of service.

A client's request for hearing must be in writing and signed by an adult member of the eligible group, or authorized hearing representative (AHR). BAM 600 (March 2021), pp. 1-2. The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days. BAM 600, p. 6.

In this case, Petitioner requested a hearing on July 8, 2022 regarding the closure of his FIP case. MDHHS informed Petitioner that his FIP case closed on March 15, 2022. Petitioner contends that he did not receive this Notice of Case Action. However, the

¹ On July 15, 2022, MDHHS issued a subsequent Notice of Case Action to Petitioner informing him that his FAP group decreased to five because household member Ali Qasim Al Hechemy is not an eligible student. Therefore, the Petitioner was approved to receive \$744.00 per month in FAP benefits.

Notice was sent to the home address that Petitioner confirmed is correct. Since Petitioner requested a hearing nearly four months after the notice of the negative case action, his request for a hearing was not timely.

Upon review, because Department policy requires that an appeal must be filed within 90 days of the case closure and notice of such closure, Petitioner's July 8, 2022 request for hearing is untimely. Therefore, this request is **DISMISSED** for lack of jurisdiction.

Food Assistance Program (FAP)

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 disputes the calculation of his household budget to determine the monthly amount of FAP benefits his household receives.

FAP benefit amounts are determined by a client's net 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 presented budget documents listing the calculations to determine Petitioner's FAP eligibility. During the hearing, all relevant budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a benefit group size of six. Subsequent to the request for hearing, the group size was decreased to five. Petitioner did not dispute the benefit group size.

MDHHS factored that Petitioner's group's unearned income was [REDACTED] per month. This amount consists of monthly Supplemental Security Income (SSI) of [REDACTED] for three household members and [REDACTED] in monthly State SSI Payments (SSP) benefits to these household members. It is noted that this totals to [REDACTED], while MDHHS only budgeted \$2,137.00. However, this benefits the Petitioner and is ultimately a harmless error. All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (July 2020), pp. 1-5. MDHHS considers the gross amount of money earned from SSI in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (April 2021), pp. 35-37. For an individual who lives in an independent living situation, State SSI Payments (SSP) are issued quarterly in the amount of [REDACTED]; and the payments are issued in the final month of each quarter; see BEM 660. MDHHS will count the monthly SSP benefit amount ([REDACTED]) as unearned income. BEM 503, pp. 36-37; BEM 660 (October 2021), pp. 1-2; RFT 248 (January 2022), p. 1. Petitioner confirmed that the income amounts were correct. No other income was reported by Petitioner or factored into the budget by MDHHS. Therefore, MDHHS properly calculated the household income.

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (January 2022) p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (S/D/V) member, MDHHS considers the following expenses: a standard deduction, childcare, court-ordered child support and arrearages paid to non-household members, and a capped excess shelter expense. BEM 554, p. 1. For groups containing S/D/V members, MDHHS additionally considers the medical expenses above \$35.00 for each S/D/V group member(s) and an uncapped excess shelter expense. BEM 554, p. 1. In this case, Petitioner reports that a group member in his household is disabled. MDHHS was unable to testify as to whether Petitioner's household is categorized as a S/D/V group. This categorization becomes essential in Petitioner's case when calculating Petitioner's excess shelter deduction. MDHHS testified that it calculated Petitioner's housing expenses from his report of \$1,500.00 in housing expenses and responsibility for paying utilities. Petitioner was credited with a standard heating/utility (h/u) credit of \$559.00. RFT 255 (October 2021) p. 1. 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 is \$1,098.00. If Petitioner's group is a non-S/D/V group, then they would qualify for the shelter maximum of \$597.00. BEM 556 (October 2021), p. 6; RFT 255, p.1. If Petitioner's group is considered a S/D/V group, then they would receive an uncapped excess shelter amount of \$1,098.00. MDHHS did not present a detailed household FAP budget or documentation showing how the excess shelter deduction was calculated. Without this information, MDHHS has failed to satisfy its burden that it acted in accordance with policy in calculating Petitioner's household budget to determine FAP eligibility.

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 failed to satisfy its burden that it acted in accordance with Department policy when it determined Petitioner's monthly FAP amount.

DECISION AND ORDER

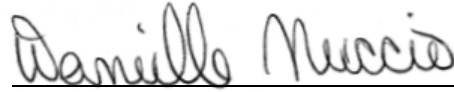
Accordingly, MDHHS' decision is **REVERSED**.

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. Determine whether Petitioner's household is considered a S/D/V group;
2. Recalculate the FAP budget after categorizing as a S/D/V or non-S/D/V household from March 15, 2022 ongoing;
3. If Petitioner is eligible for supplements, issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from March 15, 2022 ongoing;

4. Notify Petitioner of its decision in writing.

Petitioner's July 8, 2022 hearing request regarding the closure of his FIP case is **DISMISSED**.



DN/mp

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

Via-Electronic Mail :

DHHS
MDHHS-Wayne-17-hearings
D. Sweeney
B. Sanborn
M. Holden
MOAHR
BSC4

Via-First Class Mail :

Petitioner
[REDACTED]
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[REDACTED] MI [REDACTED]