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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: September 29, 2022  
MOAHR Docket No.: 22-003880  
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 September 26, 2022. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Jazlyn Cabil, specialist, and Laronda McKenzie, supervisor

**ISSUE**

The issue is whether MDHHS properly determined 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 July 8, 2022, Petitioner received ongoing gross biweekly employment income of \$██████, \$██████, and \$██████. Petitioner's income of \$██████ was not representative of projected income.
2. In July 2022, Petitioner's son, ████████ (hereinafter, "Son") received ongoing gross biweekly employment income of \$█████ and \$█████.
3. As of August 2022, Petitioner received ongoing FAP benefits as a two-person group that included herself and Son.
4. As of August 2022, Son received Supplemental Security Income (SSI) of at least \$█████ per month.

5. As of August 2022, Petitioner had no child support, dependent care, or medical expenses.
6. As of August 2022, Petitioner paid monthly housing expenses of \$1,300 and was responsible for heating/cooling expenses.
7. On August 15, 2022, MDHHS determined Petitioner to be eligible for \$74 in monthly FAP benefits beginning September 2022.
8. On August 18, 2022, Petitioner requested a hearing to dispute her FAP eligibility for September 2022.

### **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 BAM, BEM, and RFT.

Petitioner requested a hearing to dispute FAP eligibility. Exhibit A, pp. 3-5. A Notice of Case Action dated August 15, 2022, stated that Petitioner was eligible to receive \$74 in FAP benefits beginning September 2022.<sup>1</sup>

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. The notice dated August 15, 2022, included a list of all budget factors. During the hearing, all relevant budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of two: Petitioner and Son.<sup>2</sup> Petitioner did not dispute the benefit group size.

MDHHS testified it factored \$█ in gross SSI for Son; Petitioner did not dispute the SSI amount.<sup>3</sup> For FAP, MDHHS is to count a gross SSI benefit. BEM 503 (January 2020) p. 34. For FAP, the group's countable unearned income is \$█.

For FAP benefits, MDHHS generally counts gross wages.<sup>4</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

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<sup>1</sup> The notice also stated that Petitioner was eligible to receive \$20 in August 2022. During the hearing, Petitioner limited her dispute to ongoing FAP eligibility beginning September 2022

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

<sup>3</sup> Petitioner testified that Son's SSI was actually higher than the amount budgeted by MDHHS.

<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.

income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. *Id.* Stable or fluctuating biweekly employment income is converted to a monthly amount by multiplying the average income by 2.15. *Id.*, p. 8.

MDHHS presented employment documents verifying that Petitioner received biweekly gross income as follows beginning July 8, 2022: \$██████, \$██████, and \$██████. Exhibit A, pp. 14-19. MDHHS discarded the highest pay leaving two biweekly pays totaling \$██████. Multiplying the average of the two biweekly pays results in countable earned income of \$██████ (dropping cents) for Petitioner.

For Son, MDHHS factored gross biweekly income of \$██████ and \$██████ paid respectively on July 13 and July 27, 2022. Multiplying the average payment by 2.15 results in \$██████ (dropping cents) of monthly employment income for Son.

Adding Petitioner's (\$██████) and Son's (\$██████) monthly income results in a total group income of \$██████. Applying a 20% credit for timely reported income results in a countable employment income of \$██████ (dropping cents) for the group. Adding Petitioner's group's unearned income of \$██████ to the employment income 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).

It was not disputed that Son was disabled. Petitioner's testimony acknowledged that her group had no child support, dependent care, or medical expenses. Thus, Petitioner's non-shelter expenses total \$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 the group's countable income (\$██████) results in an adjusted gross income of \$██████.

MDHHS credited Petitioner with monthly housing expenses of \$1,300; Petitioner did not allege additional housing expenses. MDHHS credited Petitioner with a standard heating/utility (h/u) credit of \$559. RFT 255 (October 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 total shelter expenses of \$1,859.

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 \$812.

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 in policy is used to determine the proper FAP benefit issuance. RFT 260 (October 2021) pp. 1-5. Based on Petitioner's group size and net income, Petitioner's proper FAP issuance for September 2022 is \$74: the same amount calculated by MDHHS. Thus, MDHHS properly determined 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 determined Petitioner to be eligible for \$74 in FAP benefits beginning September 2022. The actions taken by MDHHS are **AFFIRMED**.

CG/mp



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**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

**Via-Electronic Mail :**

**DHHS**  
MDHHS-Wayne-76-Hearings  
D. Sweeney  
M. Holden  
MOAHR  
BSC4

**Via-First Class Mail :**

**Petitioner**  
[REDACTED]  
[REDACTED]  
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