



GRETCHEN WHITMER  
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.: 22-003910  
Agency No.: ██████████  
Petitioner: ██████████

**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 September 28, 2022. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Bennie Ezell, Assistant Payments Worker.

**ISSUE**

Did MDHHS properly deny Petitioner’s applications for the Food Assistance Program (FAP) and State Emergency Relief (SER) due to excess gross 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 submitted an application to MDHHS for FAP for a group size of three, consisting of her two minor children and herself. Petitioner also applied for SER for past due bills for gas, electricity, and water.
2. Petitioner works as a driver for ██████████ (Employer).
  - a. Petitioner’s work hours and income fluctuate.
  - b. Petitioner did not submit employment expenses to MDHHS at the time of her application.
3. On August 25, 2022, MDHHS issued a Notice of Case Action to Petitioner, informing her that her FAP application was denied due to excess gross income (Exhibit A, pp. 9-12).

4. On August 25, 2022, MDHHS issued a SER Decision Notice to Petitioner, informing her that her SER application was denied due to excess gross income.
5. On September 1, 2022, MDHHS received Petitioner's timely submitted hearing request, disputing the denial of her FAP and SER applications due to excess income (Exhibit A, pp. 3-6).

### **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).

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.

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.

In this case, MDHHS denied Petitioner's FAP and SER applications due to excess gross income. Petitioner disputes how MDHHS calculated her income amount to rely upon this decision.

A non-categorically eligible, non-S/D/V FAP group (those without a member that is a senior, disabled, or disabled veteran) must have income below the gross and net income limits. At the time of Petitioner's application, the gross income limit for a group size of three was \$2,379.00. RFT 250 (October 2021), p. 1. Petitioner's FAP application was denied because MDHHS determined that her gross income was in excess of this limit.

In order to receive SER, the income and assets of all household members is budgeted. The household income must be at or below the LIHEAP income limit for the group to qualify for SER. ERM 301, p. 8. The SER Income Need Standard for Energy/LIHEAP Services is \$1,610.00 for a household size of one. ERM 208 (October 2021) p. 6. For a group to be eligible for energy services, 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 standard for SER energy/LIHEAP services for the

number of group members. Petitioner's SER application was denied because MDHHS determined that her gross income was in excess of this limit.

Petitioner works as an independent contractor for Employer. MDHHS calculated Petitioner's income from Employer as earned income. However, Petitioner's work for Employer is considered self-employment. BEM 502 instructs MDHHS on the factors to consider in making the determination of whether employment should be considered self-employment or employment:

- The individual sets own work hours.
- The individual provides own tools used on the job.
- The individual is responsible for the service being provided and for the methods used to provide the service.
- The individual collects payment for the services provided from the individual paying for them.

A client need not meet all of the above to be considered self-employed. BEM 502 (October 2019), pp. 1-2. In this case, Petitioner sets her own work hours, owns the vehicle used to provide the service, and is responsible for the service being provided and for the methods used to provide the service. Petitioner's work for Employer would thus be categorized as self-employment. Since Petitioner is self-employed her income must be considered as such. Therefore, MDHHS has failed to act in accordance with policy in calculating Petitioner's income in determining her eligibility for FAP and SER.

The amount of self-employment income before any deductions is called total proceeds. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, pp. 1-3. 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. BEM 502, p. 3. BEM 502 provides a list of expenses that are allowed when determining self-employment countable income, pp. 3-4. MDHHS prospects income using a best estimate of income expected to be received during the month (or already received). MDHHS is required to seek input from the client to establish an estimate, whenever possible. Prospective budgeting requires knowledge of an individual's current, past and anticipated future circumstances. The primary source to determine self-employment income is income tax return if the client hasn't started or ended self-employment or received an increase/decrease in income and the tax return is still representative of future income. BEM 502, p. 7. In this case, Petitioner did not submit expenses to MDHHS but was advised to do so.

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 did not act in accordance with Department policy when it denied Petitioner's applications for FAP and SER due to excess gross income.

### **DECISION AND ORDER**

Accordingly, the Department's 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. Reprocess Petitioner's [REDACTED] 2022 FAP application and recalculate the FAP budget for August 5, 2022 ongoing, consistent with this decision;
2. If Petitioner is eligible for benefits, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from August 5, 2022 ongoing;
3. Reprocess Petitioner's [REDACTED] 2022 SER application and recalculate the SER budget for August 5, 2022 ongoing, consistent with this decision;
4. If Petitioner is eligible for benefits, issue supplements to Petitioner for any SER benefits she was eligible to receive but did not from August 5, 2022 ongoing;
5. Notify Petitioner of its decisions in writing.

DN/mp



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**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-15-Greydale-Hearings  
E. Holzhausen  
D. Sweeney  
M. Holden  
MOAHR  
T. Bair  
BSC4

**Via-First Class Mail :**

**Petitioner**

[REDACTED]

[REDACTED]

[REDACTED] MI [REDACTED]