



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: October 19, 2022
MOAHR Docket No.: 22-004100
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 on October 12, 2022 via teleconference. Petitioner appeared and represented herself. Michelle Collins, Eligibility Specialist, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUES

1. Did MDHHS properly determine Petitioner's Food Assistance Program (FAP) benefit rate?
2. Did MDHHS properly deny Petitioner's application for State Emergency Relief (SER)?

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 benefits on behalf of herself and two adult children, ██████████ (Daughter) and ██████████ (Son).
2. On ██████████, 2022, Petitioner filed an application for SER for assistance with heat and non-heat electricity (Exhibit A, p. 8).
3. On September 12, 2022, MDHHS sent Petitioner a SER Decision Notice, which indicated that Petitioner's application for SER services was denied because the

countable income for the household was higher than the maximum amount allowed for the program (Exhibit A, p. 27).

4. On September 12, 2022, MDHHS sent Petitioner a Notice of Case Action, closing Petitioner's FAP case, effective October 1, 2022, because the household's gross income exceeded the limit for the program (Exhibit A, pp. 28-29). The total monthly income budgeted for the household was \$ [REDACTED] (Exhibit A, p. 29).
5. On [REDACTED], 2022, Petitioner filed a hearing request to dispute MDHHS' actions regarding Petitioner's SER application and FAP case (Exhibit A, pp. 3-6).
6. On September 14, 2022, MDHHS sent Petitioner a subsequent SER Decision Notice, which indicated that Petitioner's application for SER services was denied because the countable income for the household was higher than the maximum amount allowed for the program (Exhibit A, pp. 30-31).
7. On September 14, 2022, MDHHS sent Petitioner a Notice of Case Action, closing Petitioner's FAP case, effective October 1, 2022, because the household's gross income exceeded the income limit for the program (Exhibit A, pp. 32-33). The total monthly income budgeted for the household was [REDACTED] (Exhibit A, p. 33).

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).

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. MDHHS 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, MDHHS determined that Petitioner's FAP household was over the income limit for the program based on income received by Petitioner's adult children. MDHHS testified that it initially made an error on the September 12, 2022 Notice of Case Action when it budgeted the household income in the amount \$ [REDACTED] (Exhibit A, p. 29). Before MDHHS' September 12, 2022 determination went into effect, MDHHS recalculated Petitioner's household income on September 14, 2022 and determined that the FAP group was over the income limit based on [REDACTED] in monthly income (Exhibit A, p. 33). Additionally, at the hearing, MDHHS testified that Petitioner's FAP case was not closed on October 1, 2022 because the income from the adult children was temporary and was removed by MDHHS, beginning September 2, 2022. However,

at the hearing, MDHHS did not introduce evidence regarding what Petitioner's new FAP benefit rate was or how it calculated the household income for October 1, 2022 ongoing.

Petitioner expressed frustration regarding MDHHS' attempt to "fix everything" prior to the hearing. However, that is precisely what MDHHS is required to do. As soon as a client requests a hearing, MDHHS must attempt to resolve any disagreements and misunderstandings at the lowest possible level to avoid unnecessary hearings. BAM 600 (March 2021), p. 17. If the local office determines that a case action needs correction, it must update the client's case with the corrected information. *Id.*, p. 20.

To determine eligibility for FAP, MDHHS must consider all earned and unearned income available to the household. BEM 500 (April 2022), pp. 1-5. A group's FAP benefit rate is based on actual income and prospective income. BEM 505 (November 2021), p. 1. Prospective income is the best estimate of income expected to be received by the group during a specific month. *Id.* To determine a group's prospective income, MDHHS is required to seek input from the client whenever possible. *Id.* Each source of income is converted into a standard monthly amount. *Id.* Stable income refers to income received on a regular schedule that does not vary from check to check based on pay schedules or hours worked. *Id.* Fluctuating income is income received on a regular schedule but that varies from check to check, such as a waitress' income whose hours vary each week. *Id.*, p. 2. Contractual or single payment income is that is received in one month that is intended to cover more than one month. *Id.* Irregular income refers to income that is not received on a regular schedule or that is received unpredictably, such as a person self-employed doing snow removal. *Id.*

MDHHS converts stable and fluctuating income to a standard monthly amount by multiplying weekly income by 4.3, multiplying amounts received every two weeks by 2.15 or adding amounts received twice a month. BEM 505 (November 2021), p. 8. For irregular income, MDHHS determines the standard monthly amount by adding the amounts entered together and dividing by the number of months used. *Id.*, p. 9.

Here, MDHHS determined that Petitioner's FAP group was over the income limit based on income from the adult children that was previously not budgeted. Petitioner testified that Son and Daughter were participating in [REDACTED], which was a six-week summer program through the City of [REDACTED]. The final check Son and Daughter received from [REDACTED] was issued on September 2, 2022 (Exhibit A, pp. 15, 16). Therefore, that income was temporary/irregular and should not have been included in the FAP budget for October 1, 2022 ongoing because it ended prior to Petitioner's FAP application. No evidence was presented regarding whether MDHHS converted this irregular income to standard monthly amount. No evidence was presented that MDHHS attempted to contact Petitioner for more information about this income or to determine the best estimate of the household's prospective income. Although MDHHS testified that it removed this income before the FAP case closed, no evidence was presented regarding what Petitioner's new benefit rate was. Given that the record was silent on these issues, it is not possible to determine if MDHHS properly budgeted Petitioner's household income for October 1, 2022 ongoing.

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 of showing that it acted in accordance with Department policy when it determined Petitioner's FAP benefit rate.

State Emergency Relief (SER)

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by MDHHS pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

In this case, Petitioner applied for SER for assistance with heat and electricity on ██████████ 2022 (Exhibit A, pp. 8-10). On September 12, 2022, MDHHS sent Petitioner an SER Decision Notice, indicating that her application for SER was denied for energy services because her countable income was higher than the maximum allowed for the program (Exhibit A, pp. 26-27). On September 14, 2022, MDHHS sent another SER Decision Notice, which indicated that Petitioner's application for SER was denied because her income was higher than the maximum allowed for the program. At the hearing, MDHHS explained that it made an error when calculating the household budget on the September 12, 2022 SER Decision Notice.

To determine whether an individual is eligible for SER, MDHHS must verify and budget all non-excluded gross income the SER group expects to receive during the countable income period. ERM 206 (November 2019), p. 1. The countable income period is 30 days, beginning on the date the application is received. *Id.* MDHHS is required to verify all non-excluded income, expenses and deductions. *Id.*, p. 6. The client must make a reasonable effort to obtain required verifications and MDHHS must assist the client if the client requests assistance. *Id.*

Here, MDHHS testified that Petitioner's income exceeded the income limit for the program based on income Petitioner's adult children were receiving from ██████████ ██████████. As described above, Petitioner testified that ██████████ was a temporary six-week summer program through the City of ██████████ and Son and Daughter received their final check from ██████████ on September 2, 2022. Because the final check was issued before Petitioner applied for SER, this income should not have been considered in the budget calculation. No evidence was presented that MDHHS attempted to contact Petitioner to verify this income before denying her application.

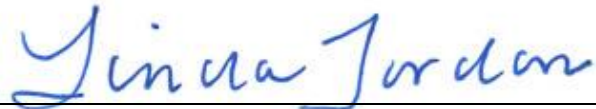
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's SER application.

DECISION AND ORDER

Accordingly, MDHHS decision is **REVERSED**.

MDHHS 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. Redetermine Petitioner's FAP benefit rate for October 1, 2022 ongoing;
2. Issue supplements to Petitioner for any FAP benefits that she was eligible to receive but did not from October 1, 2022 ongoing;
3. Reinstate Petitioner's [REDACTED], 2022 SER Application;
4. Redetermine Petitioner's eligibility for SER assistance from September 8, 2022 ongoing;
5. Issue supplements to Petitioner or Petitioner's providers for any SER assistance that she was eligible to receive but did not, beginning September 8, 2022 ongoing; and
6. Notify Petitioner of its decision(s) in writing.



Linda Jordan
Administrative Law Judge

LJ/tm

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
Caryn Jackson
Wayne-Hamtramck-DHHS
12140 Joseph Campau
Hamtramck, MI 48212
**MDHHS-Wayne-55-
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Interested Parties

M. Holden
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Via-First Class Mail :

Petitioner

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