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GOVERNOR

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

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DIRECTOR

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Date Mailed: November 30, 2022
MOAHR Docket No.: 22-004999
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 November 23, 2022. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Brittany Cheeks, specialist

ISSUES

The first issue is whether MDHHS properly denied Petitioner’s State Emergency Relief (SER) application requesting energy assistance.

The second issue is whether MDHHS properly terminated 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. In September 2022, Petitioner received the following weekly income beginning September 9 from her employer, ██████████ (hereinafter, “Employer”): \$██████████, \$██████████, \$██████████, and \$██████████.
2. On ██████████ 2022, Petitioner applied for SER seeking assistance with an energy bill (SER- Energy) and reported a three-person household and \$1,200 in dependent care expenses.
3. From September 30 through October 28, 2022, Petitioner received \$██████████ in weekly income for working zero hours.

4. As of October 2022, Petitioner reported to MDHHS monthly housing costs of \$1,200 and a responsibility for heat and/or cooling.
5. On October 13, 2022, MDHHS interviewed Petitioner who reported that she will receive \$[REDACTED] in gift income from her mother that month. Petitioner also reported that she is receiving no income from Employer and that she cannot verify the lack of income.
6. On [REDACTED] 2022, MDHHS denied Petitioner's SER- Energy application due to excess income.
7. On [REDACTED] 2022, MDHHS terminated Petitioner's FAP eligibility beginning [REDACTED] 2022 due to excess net income.
8. As of October 13, 2022, MDHHS did not request verification of Petitioner's dependent care expenses.
9. On October 21, 2022, Petitioner requested a hearing to dispute the denial of SER and termination of FAP benefits.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Emergency Relief Manual (ERM).

Petitioner requested a hearing, in part, to dispute a denial of an SER application. Exhibit A, pp. 3-5. It was not disputed that Petitioner applied for SER on [REDACTED] 2022, seeking energy assistance.¹ MDHHS testified that Petitioner was denied on [REDACTED] 2022, due to excess income.

There are no income copayments for SER- Energy. ERM 208 (December 2021) p. 1. With respect to income, clients are either eligible or not for SER-Energy. *Id.* For a group to be eligible for SER-Energy, 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 income standard which is based on the number of group members. *Id.* If the income exceeds the income standard limit, the SER request must be denied. *Id.*

MDHHS is to 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

¹ The evidence suggested Petitioner also applied for SER to pay a water bill. MDHHS denied Petitioner's SER request for water bill payment. During the hearing, Petitioner testified that she did not dispute the denial of SER concerning the water bill.

countable income period consists of 30 days beginning with the SER application date. *Id.* In the present case, the countable income period begins with Petitioner's application date of September 30, 2022.

A single SER group consists of persons who occupy the same home. ERM 201 (October 2020) p. 1. It was not disputed that Petitioner resided with two persons. Thus, Petitioner's SER group size is three persons.

MDHHS presented documents from TheWorkNumber verifying Petitioner's income from Employer. Exhibit A, pp. 13-21. As of Petitioner's application date of [REDACTED] 2022, Petitioner received \$[REDACTED] in gross income per week during October 2022. Multiplying Petitioner's income by four results in a total of \$[REDACTED] in countable income.² Petitioner also reported to MDHHS on October 13, 2022, that she received \$[REDACTED] from her mother during October 2022. Adding Petitioner's income from Employer to her gift income results in a countable SER income of \$[REDACTED].

Petitioner testified that she did not receive any income since going on leave from employment. Petitioner claimed that the weekly \$[REDACTED] payments listed on TheWorkNumber documents are incorrect and only reflect payments she could receive from Employer when she completes the necessary medical paperwork. TheWorkNumber is a reliable third-party method of verifying income. There is no known scenario where TheWorkNumber would list income that was potentially available pending paperwork. MDHHS properly advised Petitioner if she did not receive the income, then she could submit documentation verifying otherwise; Petitioner responded there was nothing she could submit.³ Petitioner's claim of not receiving income was uncorroborated and contradictory to the evidence. Given the evidence, Petitioner's countable SER income was \$[REDACTED].

The SER-energy income standard limit for a three-person group is \$2,745. ERM 208 (October 2021) p. 8. Petitioner's countable income of at least \$[REDACTED] exceeded the income limit for SER-Energy. Thus, MDHHS properly denied Petitioner's SER- Energy application due to excess income.

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 Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

² If the countable income period were accurately applied, all five payments of \$[REDACTED] received by Petitioner would be countable in the SER budget. For purposes of this decision, only four will be counted.

³ One example of verification that Petitioner could have submitted is a written statement from Employer.

Petitioner also requested a hearing to dispute a termination of FAP benefits. Exhibit A, pp. 3-5. A Notice of Case Action dated ██████████ 2022, stated that Petitioner's FAP eligibility would end ██████████ 2022 due to excess net income.⁴ Exhibit A, pp. 7-11.

BEM 556 outlines the factors and calculations required to determine a client's net income for FAP eligibility. Net income factors group size, countable monthly income, and relevant monthly expenses. The notice dated ██████████ 2022, included a list of all budget factors. Exhibit A, p. 8. During the hearing, all relevant budget factors were discussed with Petitioner.

In determining Petitioner's FAP eligibility, MDHHS factored a benefit group of three persons.⁵ Petitioner did not dispute the benefit group size of three.

MDHHS calculated an unearned income of \$██████ for Petitioner's group. MDHHS testified that it counted the \$██████ in gift income from Petitioner's mother and Petitioner's last four weekly payments from Employer in September 2022 (\$██████, \$██████, \$██████, and \$██████).⁶ MDHHS counted all income as unearned based on Petitioner reporting that she was on leave from working. Petitioner's reporting was consistent with TheWorkNumber documents listing zero work hours.

MDHHS policy does not specifically address whether paid leave is employment or unearned income. However, it is generally accepted that employer-paid income for non-work time (e.g., vacations, sickness, school leave...) is employment income.⁷ In the present case, TheWorkNumber documents verified employer-paid income to Petitioner. Thus, the income should be counted as derived from employment. The distinction matters because MDHHS is to apply a 20% budget credit to timely reported employment income; unearned income receives no such credit.

Given the evidence, MDHHS incorrectly factored Petitioner's income from Employer as unearned income. As a remedy, MDHHS will be ordered to redetermine Petitioner's eligibility. To simplify the remaining analysis, \$██████ will be accepted as Petitioner's proper countable unearned income.

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

⁴ The evidence suggested that Petitioner may have applied for FAP benefits shortly before receiving notice of benefit termination. Such a scenario is plausible if Petitioner received expedited FAP benefits which MDHHS issues based on a client's statements.

MDHHS approved Petitioner for expedited FAP benefits before terminating eligibility.

⁵ See BEM 212 for policies on determining group size for FAP benefits.

⁶ Per BEM 505, MDHHS multiplied Petitioner's average weekly pay by 4.3 which resulted in \$██████ in countable income. Then MDHHS added the \$██████ in gift income from Petitioner's mother.

⁷ This generality is consistent with MDHHS' definition of wages which includes severance pay. BEM 501 (July 2022) p. 6.

groups containing SDV members, MDHHS additionally considers an uncapped excess shelter expense and the medical expenses above \$35 for each SDV group member(s).

Petitioner's testimony acknowledged that no persons in her household were SDV members. Thus, medical expenses may not be considered. Petitioner also acknowledged having no child support expenses. Petitioner claimed on her SER application that she paid \$1,200 in monthly dependent care expenses to allow her to travel to medical appointments.

MDHHS is to allow an unreimbursed dependent care expense for a child under the age of 18 or an adult of any age who is incapacitated and a member of the FAP group, when such care is necessary to enable a member of the FAP group to work. BEM 554 (January 2022) p. 7. Dependent care expenses must be verified. *Id.*, p. 8.

It is debatable whether Petitioner's claimed dependent care expenses are allowable because Petitioner was on a leave from work when she claims the expenses were incurred. It was not disputed that MDHHS did not attempt to verify the expenses. MDHHS's failure to attempt to verify Petitioner's dependent care expenses is reversible error. As a remedy, MDHHS will be ordered to request verification of Petitioner's dependent care expenses when reprocessing Petitioner's FAP eligibility. To simplify the remaining budget analysis, it will be accepted that Petitioner's dependent care expenses were \$0.

Petitioner's FAP benefit group size justifies a standard deduction of \$193 (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 (\$193) 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 \$1,200. MDHHS also credited Petitioner with a standard heating/utility (h/u) credit of \$620. RFT 255 (October 2022) p. 1. Generally, the h/u credit covers all utility expenses and is the maximum credit available.⁸ Adding Petitioner's housing expenses and utility credits results in total shelter expenses of \$1,820.

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 expenses are \$164.

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 \$██████ in net income

⁸ 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.

for Petitioner's group. A chart is used to determine the proper FAP benefit issuance. RFT 260 (October 2022) pp. 1-5. Based on Petitioner's group size and net income, Petitioner's proper FAP issuance for November 2022 is \$0: the same amount calculated by MDHHS. Thus, MDHHS properly determined Petitioner's FAP eligibility other than counting employment income as unearned income and not attempting to verify Petitioner's reported dependent care expenses.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's application for SER- Energy dated [REDACTED] 2022. Concerning SER, the actions taken by MDHHS are **AFFIRMED**.

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

- (1) Reprocess Petitioner's FAP eligibility beginning [REDACTED] 2022 subject to the following findings:
 - a. MDHHS improperly counted income from Employer as unearned income;
 - b. MDHHS failed to request verification of reported dependent care expenses' and
- (2) Issue notice and benefit supplements, if any, in accordance with policy.

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

CG/mp



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
E. Holzhausen
D. Sweeney
K. Schulze
M. Holden
MOAHR
BSC4

Via-First Class Mail :

Petitioner
[REDACTED]
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