



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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██████████, MI ██████████

Date Mailed: January 10, 2023  
MOAHR Docket No.: 22-005753  
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 January 5, 2023. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Arkeyta Beale, Family Independence Specialist.

**ISSUE**

Did MDHHS properly calculate Petitioner's Food Assistance Program (FAP) budget to determine her monthly amount of benefits?

**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 for a group size of four, consisting of her three minor children and herself. There are no senior (over 60 years old), disabled or disabled veteran (S/D/V) individuals in Petitioner's FAP group.
2. MDHHS received two statements from the father of two of Petitioner's children, ██████████ (Father): one stating that he pays her \$██████████ in monthly child support and one stating that he pays her \$██████████ in monthly child support (Exhibit A, pp. 10-11).
3. On December 2, 2022, MDHHS issued a Notice of Case Action to Petitioner informing her that she was eligible for FAP benefits in the amount of \$██████████ monthly for a group size of four, effective December 1, 2022 (Exhibit A, pp. 5-9).
4. On December 7, 2022, MDHHS received a timely submitted hearing request from Petitioner disputing the monthly amount of FAP benefits she is eligible to receive (Exhibit A, pp. 3-4).

## 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.

In this case, Petitioner requested a hearing to dispute the determination of her monthly FAP amount, specifically the amount of child support that was budgeted as unearned income. Petitioner was approved to receive \$[REDACTED] per month in FAP benefits.<sup>1</sup>

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 (see Exhibit A, pp. 15-17). During the hearing, all relevant budget factors were discussed with Petitioner.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits. BEM 500 (April 2022), pp. 1-5. Petitioner testified that her household has no self-employment or earned income. MDHHS calculated income from child support that Father pays for two of Petitioner's children. Voluntary support means child support payments that are not court-ordered. The payments are received by the individual directly from the absent parent. MDHHS counts the total amount as the child's unearned income. BEM 503 (October 2022) p. 10. When calculating child support income, MDHHS uses the monthly average of the child support payments received in the past three calendar months, unless changes are expected. BEM 505 (October 2022), pp. 4-5. If there are known changes that will affect the amount of the payments in the future, MDHHS will not use the previous three months. BEM 505, p. 4. In this case, MDHHS received a statement from Father stating that he gives Petitioner \$[REDACTED] month (Exhibit A, p. 10), and another statement that states he gives Petitioner \$[REDACTED] a month (Exhibit A, p. 11). Neither statement was signed or dated but did list a phone number. MDHHS testified that on November 15, 2022, the caseworker called the phone number listed and asked for Father, who stated that he gives Petitioner \$[REDACTED] per month. MDHHS did not verify Father's identity on

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<sup>1</sup> Though Petitioner is eligible for \$[REDACTED] in monthly FAP benefits, MDHHS has issued the maximum FAP issuance for a client's group size since March 2020. The extra benefits are a result of a temporary policy during the COVID-19 pandemic. As the policy is only temporary, a full analysis of Petitioner's FAP eligibility is still appropriate.

the phone call. Petitioner testified that Father never gives her money but occasionally will give the children specific items that they need, such as a haircut. Petitioner testified that she has to rely on donations to clothe her children because Father provides so little support. Despite receiving information from Father of three different amounts of child support, and Petitioner disputing these amounts, MDHHS did not take additional steps to verify the actual amount of child support that Petitioner receives. MDHHS also did not average three months of child support payments but relied upon the highest amount reported to use in Petitioner's FAP budget. MDHHS must tell the client what verification is required, how to obtain it, and the due date. BAM 130 (January 2022), p. 1. MDHHS is required to use a Verification Checklist (VCL) to request verification from clients. BAM 130, p. 3. In this case, MDHHS did not properly verify the amount of child support income that Petitioner receives, contrary to policy. Therefore, MDHHS did not act in accordance with policy when calculating Petitioner's household budget to determine her monthly FAP amount.

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 the MDHHS did not act in accordance with Department policy when it determined Petitioner to eligible for \$[REDACTED] in monthly FAP benefits.

### **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. Recalculate the FAP budget for December 1, 2022 ongoing, in accordance with Department policy and consistent with this Hearing Decision;
2. If Petitioner is eligible for supplements, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from December 1, 2022 ongoing
3. Notify Petitioner of its decision in writing.



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**Danielle Nuccio**  
Administrative Law Judge

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**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**  
Denise Ezell  
Wayne Pathways to Potential-DHHS  
3040 W Grand Blvd STE 5-450  
Detroit, MI 48202  
**MDHHS-Wayne-23-  
Hearings@michigan.gov**

**Interested Parties**  
M. Holden  
D. Sweeney  
BSC4

**Via-First Class Mail :**

**Petitioner**  
[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]