



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: January 13, 2023  
MOAHR Docket No.: 22-005885  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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 12, 2023, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Alexandra Aniol, Assistance Payments Worker.

**ISSUE**

Did the Department properly deny Petitioner's Food Assistance Program (FAP) benefit application?

**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 for benefits and reported her household consisted of herself and her two children (Exhibit A, pp. 7-16).
2. On November 9, 2022, Petitioner completed an interview related to her application and reported that her household consisted of herself, her three children and her husband (Exhibit A, pp. 17-23).
3. Petitioner's husband had income from employment (Exhibit A, pp. 24-27).
4. On November 17, 2022, the Department sent Petitioner a Notice of Case Action informing her that her FAP application had been denied due to excess gross income (Exhibit A, pp. 29-32).

5. On December 14, 2022, Petitioner submitted a request for hearing disputing the Department's actions.

### **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, the Department sent Petitioner a Notice of Case action on November 17, 2022, stating her FAP benefits were denied for exceeding the gross income limit. A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550 (January 2017), p. 1. Gross income limitations are based on group size and are set forth in RFT 250.

In the application submitted by Petitioner, she reported that her household consisted of herself and her two children. Petitioner later reported at her FAP interview that her household consisted of herself, her three children, who were under the age of 22, and her husband.

FAP budget calculations require the consideration of the group size. The Department will determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. BEM 212 (January 2022), p. 1. The FAP group composition is established by determining all of the following: who lives together, the relationship(s) of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. BEM 212, p. 6. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p. 1. Individuals that are disqualified due to an intentional program violation (IPV) are not members of the FAP group. BEM 212, p. 8.

The Department testified that it included Petitioner, her three children and her husband in the FAP group, due to Petitioner's statements at the interview. Petitioner was a disqualified group member, due to a 24-month IPV sanction for the period of March 2022, through February 2024 (MOAHR docket number: 21-005106). At the hearing, Petitioner contended that she did not live with her husband. Petitioner stated that her

husband leases her residence, and she sublets from him, but that he does not live in the household.

At the hearing, Petitioner provided inconsistent statements about her husband's presence in the home. Petitioner also provided inconsistent statements to the Department during the application process as to who resided in her home. Additionally, Petitioner was found to have committed an IPV, as a result of failing to accurately report her household members and their income. Due to Petitioner's inconsistencies, the Department acted in accordance with policy when it determined that Petitioner's household to be herself, her three children and her husband, and that Petitioner was disqualified from the group due to the IPV. Thus, Petitioner has a group size of four.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (January 2016), p. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (April 2017), p. 1. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, p. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, p. 8-9. Income received twice per month is added together. BEM 505, p. 8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. Income received weekly is converted to a standard amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. BEM 505, pp. 7-9.

The Department determined that Petitioner's household had a gross income amount of \$[REDACTED]. The Department presented check stubs from Petitioner's husband's income from employment (Exhibit A, pp. 24-27). Petitioner's husband was paid in the gross amount of \$[REDACTED] on October 20, 2022; \$[REDACTED] on October 27, 2022; \$[REDACTED] on November 3, 2022; and \$[REDACTED] on November 10, 2022. The Department disregarded the October 20, 2022 payment, as it was unusually lower than his other payment amounts. When averaging Petitioner's husband income and multiplying by the 4.3 multiplier, it results in a standard gross income amount of \$[REDACTED]. Therefore, the Department properly determined the household's gross income.

Because all FAP applicants and recipients are eligible for enhanced authorization for Domestic Violence Prevention Services (DVPS), the monthly categorical income limit (200% of the poverty level), from RFT 250, column D (October 2016), p. 1, applies as the standard for FAP gross income eligibility. BEM 213 (January 2016), pp. 1-2. For a four-person FAP group, the applicable 200% gross income limit is \$4,626. As Petitioner's household gross income was \$[REDACTED], the gross income limit for FAP eligibility was not exceeded.

The Department also presented a net income budget, showing that Petitioner exceeded the net income for her household (Exhibit A, p. 28). A non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. BEM 550 (January 2017), p.1. Net income limitations are based on group size and are set forth in RFT 250.

The deductions to income on the net income budget were also reviewed. There was no evidence presented that Petitioner's group includes a senior/disabled/veteran (SDV) household member. BEM 550 (January 2017), pp. 1-2. Thus, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (January 2020), p. 1; BEM 556 (January 2020), p. 3.

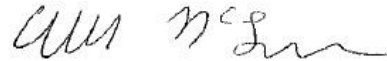
The Department will reduce the gross countable earned income by 20 percent and is known as the earned income deduction. BEM 550 (January 2022), p.1. The Department correctly determined Petitioner is entitled to an earned income deduction of \$707. Petitioner's FAP benefit group size of four justifies a standard deduction of \$193. RFT 255 (October 2022), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. Therefore, the budget properly excluded any deduction for dependent care or child support expenses.

In calculating the excess shelter deduction of \$303, the Department stated that it considered Petitioner's verified housing expense of \$1,000 and that she was responsible for a monthly heating expense, entitling her to the heat/utility standard of \$620. BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount, they added the total shelter amount and subtracted 50% of the adjusted gross income. Petitioner's excess shelter deduction was properly calculated at \$303 per month.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$[REDACTED]. Petitioner's adjusted gross income subtracted by the \$303 excess shelter deduction results in a net income of \$[REDACTED]. The net income limit for a group of four is \$2,313. RFT 250 (October 2022), p. 1. Therefore, the Department acted in accordance with policy when it denied Petitioner's application for FAP benefits for exceeding the net income limits.

**DECISION AND ORDER**

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 Department acted in accordance with Department policy when it denied Petitioner's application for FAP benefits due to exceeding the net income limit. Accordingly, the Department's decision is **AFFIRMED**.



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**Ellen McLemore**  
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**

Chelsea McCune  
Macomb County DHHS Warren Dist.  
27690 Van Dyke  
Warren, MI 48093

**MDHHS-Macomb-20-  
Hearings@michigan.gov**

**Interested Parties**

M. Holden  
D. Sweeney  
BSC4

**Via-First Class Mail :**

**Petitioner**

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