



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: April 7, 2023  
MOAHR Docket No.: 23-001274  
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 April 3, 2023. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Valarie Foley, Hearings Facilitator.

**ISSUE**

Did MDHHS properly deny Petitioner's Food Assistance Program (FAP) application 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 applied for FAP benefits for a group size of two, consisting of her minor daughter and herself. Petitioner's household does not contain a Senior, Disabled, or Disabled Veteran (S/D/V) individual (Exhibit A, pp. 7-14).
2. Petitioner has earned income from employment at ██████████ (Employer) and is paid bi-weekly (Exhibit A, pp. 15-20).
3. On February 3, 2023, 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. 27-30).

4. On March 1, 2023, MDHHS received Petitioner's timely submitted hearing request disputing the denial of her FAP application due to excess gross 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.

In this case, Petitioner disputes the denial of her FAP application due to excess gross income. Petitioner argues that MDHHS relied upon earned income that does not accurately reflect her usual pay.

All FAP groups which do not contain a Senior, Disabled, or Disabled Veteran (S/D/V) group member, such as Petitioner's, must have income below the Gross Income Limit and the Net Income Limit. BEM 550 (January 2022), p. 1. Petitioner is a group size of two, subject to a Gross Income Limit of \$1,984.00 and Net Income Limit was \$1,526.00. RFT 250 (October 2022), p. 1; BEM 213 (January 2023), p. 1. MDHHS determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. In prospecting income, MDHHS 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 (October 2022) pp. 5-6. A standard monthly amount must be determined for each income source used in the budget, which is determined by multiplying average biweekly pay by 2.15 and average weekly pay by 4.3. BEM 505 pp. 8-9.

In this case, MDHHS determined Petitioner's gross earned income amount using pay information received from The Work Number database, which receives income information directly from Employer and is accessed using Petitioner's Social Security Number (see Exhibit A, pp. 15-20). Petitioner did not dispute the accuracy of the income information that MDHHS relied upon. MDHHS testified that they used Petitioner's income information from December 2022 and January 2023 to calculate her earned income amount. Petitioner argues that her pay in December 2022 does not accurately reflect her usual income because she was able to earn overtime due to the holiday shopping season. Petitioner testified that she typically works about 80 hours per pay

period, whereas the December 8, 2022 paycheck was for 94.46 hours. MDHHS argues that Petitioner worked 94.78 hours for the paycheck dated February 2, 2023, so the December paycheck was not unusual. Petitioner testified that in February she received a bonus and worked extra hours and that this was not income she usually receives. Upon review of the Work Number database, Petitioner typically works about 60-85 hours per pay period. Therefore, Petitioner's December 8, 2022 paycheck is unusual pay since she worked 94.46 hours in that period. Since this is unusual pay, it should have been discarded from calculating Petitioner's prospective income.

However, MDHHS testified that they also considered Petitioner's income from January 2023. Petitioner did not dispute the income amounts from January 2023 in prospecting her income for eligibility for FAP benefits. The two paychecks that Petitioner received in January, converted to a standard monthly amount for biweekly pay by multiplying the average pay by 2.15, results in:

$$\begin{aligned} & \$ \blacksquare + \$ \blacksquare = \blacksquare \\ & \text{Divided by 2} = \blacksquare \\ & \text{Multiplied by 2.15} = \blacksquare \end{aligned}$$

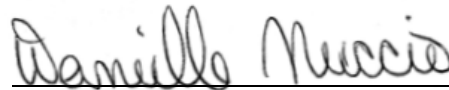
Since Petitioner's monthly income in January 2023 is still over the gross income limit for a group size of two, \$1,984.00, MDHHS' error in calculating Petitioner's December income is ultimately harmless. Petitioner is still over the gross income limit for eligibility for FAP benefits based upon her January 2023 income. Therefore, MDHHS acted in accordance with policy in determining Petitioner was not eligible to receive FAP benefits due to excess gross income. Petitioner is advised that if her work hours and income decrease then she may re-apply for FAP benefits.

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 acted in accordance with Department policy when it denied Petitioner's FAP application.

**DECISION AND ORDER**

Accordingly, the Department's decision is **AFFIRMED**.

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-19-Hearings  
D. Sweeney  
M. Holden  
MOAHR  
BSC4

**Via-First Class Mail :**

**Petitioner**  
[REDACTED]  
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