



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

Date Mailed: November 2, 2023
MOAHR Docket No.: 23-006367
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 October 30, 2023. Petitioner was represented by her husband and household member, [REDACTED]. The Department of Health and Human Services (MDHHS) was represented by Alyssa Denson, Eligibility Specialist.

ISSUE

Did MDHHS properly close Petitioner's Food Assistance Program (FAP) case due to excess net 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. Petitioner is an ongoing recipient of FAP benefits for a group size of seven.
 - a. Petitioner's FAP group is categorized as an S/D/V group, containing a senior (over [REDACTED] years old), disabled or disabled veteran (S/D/V) individual.
 - b. Petitioner receives monthly income from Supplemental Security Income (SSI).
 - c. Petitioner's husband, [REDACTED] (Husband), is self-employed.
 - d. Petitioner's adult son, [REDACTED] (Son), is employed at Excellacare (Son Employer).

- e. Petitioner's two adult daughters, [REDACTED] and [REDACTED] (Daughters) are enrolled in college full-time. Neither daughter is currently employed or enrolled in a qualifying training program.
2. On September 27, 2023, MDHHS issued a Notice of Case Action to Petitioner informing her that her FAP case was closed due to excess net income, effective August 1, 2023 (Exhibit A, pp. 6-10).
3. On September 29, 2023, MDHHS received a timely submitted request for a hearing from Petitioner disputing the closure of her FAP case due to excess net income (Exhibit A, pp. 3-5).

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.

Petitioner requested a hearing to dispute the closure of her FAP case due to excess net income.

Petitioner's group size is categorized as an S/D/V group. MDHHS determined Petitioner's group size to be five, concluding that Daughters are not included in the FAP group size they are ineligible students. To be eligible to receive FAP benefits, a person enrolled in a post-secondary education program may be in student status, as defined in BEM 245. BEM 230B (January 2018), p. 5. Pursuant to BEM 245 (April 2021), p. 2, a person enrolled in a post-secondary education program may be in student status and must meet certain criteria in order to be eligible for assistance. A person is in student status if she is:

- Age 18 through 49 and
- Enrolled half-time or more in a: regular curriculum at a college or university that offers degree programs, regardless of whether a diploma is required.

(BEM 245, p. 3-4).

Here, Daughters are between ages [REDACTED] years old and attend college full-time. Therefore, both daughters would be considered in student status.

In order for a person in student status to be eligible to receive FAP benefits, they must meet one of the following criteria:

- Receiving Family Independence Program (FIP).
- Enrolled in an institution of higher education as a result of participation in certain qualified programs as outlined in policy.
- An employment and training program for low-income households operated by state and local government where one or more of the components of such program is at least equivalent to an acceptable FAP employment and training program component.
- Employed for at least an average of 20 hours per week and paid for such employment.
- Self-employed for at least an average of 20 hours per week and earning an average weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.

(BEM 245, pp. 4-5).

Here, Petitioner reported that Daughters are not employed and do not meet another qualifying criteria to receive FAP benefits as students. Therefore, MDHHS properly determined Petitioner's group size to be five, excluding Daughters from the FAP group.

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. 17; 70). 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 receives unearned income from SSI, a benefit administered by the Social Security Administration. SSI is a means-tested program that can be received based on age, disability or blindness. Petitioner receives \$412.00 in monthly SSI income (see Exhibit A, pp. 19-21). For an individual who lives in an independent living situation, State SSI Payments (SSP) are issued quarterly in the amount of \$42.00. BEM 503, pp. 36-37; BEM 660 (October 2021), pp. 1-2; RFT 248 (January 2023), p. 1. MDHHS counts the gross benefit amount of SSI and SSP as unearned income. BEM 503 (January 2023), pp. 35-36. Upon review, MDHHS acted in accordance with policy in determining that Petitioner receives \$426.00 total in monthly unearned income.

Son receives earned income from employment. MDHHS counts gross wages in the calculation of earned income. BEM 501 (July 2022), pp. 6-7. MDHHS 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 (October 2023), pp. 1-2. 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, pp. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. 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. Income received twice per month is added together. BEM 505, pp. 7-9. In this case, MDHHS testified that they used Son's paystubs from June 10, 2023 for \$ [REDACTED], from June 17, 2023 for \$ [REDACTED], from June 24, 2023 for \$ [REDACTED], and from July 1, 2023 for \$ [REDACTED] to determine earned income totaling \$ [REDACTED]. Upon review of paystubs from Employer (see Exhibit A, pp. 36-40), MDHHS properly calculated Son's earned income from employment to be \$ [REDACTED].

Individuals who run their own businesses are self-employed. BEM 502 (October 2019), p. 1. The amount of self-employment income before any deductions is called total proceeds. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502, p. 3. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3. BEM 502 provides a list of expenses that are allowed when determining self-employment countable income, pp. 3-4. MDHHS prospects income using a best estimate of income expected to be received during the month (or already received). MDHHS is required to seek input from the client to establish an estimate, whenever possible. Prospective budgeting requires knowledge of an individual's current, past and anticipated future circumstances. If income is ending, past income will not be a good indicator of future income. BEM 505, pp. 3-4. The primary source to determine self-employment income is income tax return if the client hasn't started or ended self-employment or received an increase/decrease in income and the tax return is still representative of future income. BEM 502, p. 7.

In this case, MDHHS testified that they calculated Petitioner's self-employment income by relying on tax returns from 2022 (see Exhibit A, pp. 41-63). MDHHS used Line 7 of the Profit or Loss from Business Schedule C to determine Petitioner's gross income. Petitioner did not submit verification of actual business expenses, so MDHHS calculated a 25% allowable expense. Upon review, MDHHS properly calculated Petitioner's self-employment income to be \$ [REDACTED] monthly.

In total, Petitioner's household has \$ [REDACTED] in monthly income, calculated by MDHHS in accordance with policy.

MDHHS will reduce the gross countable earned income by 20%, known as the earned income deduction. BEM 550 (April 2023), p. 1. MDHHS correctly determined Petitioner is entitled to an earned income deduction of \$ [REDACTED].

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (April 2023) p. 1. For groups containing S/D/V members, such as Petitioner's, MDHHS considers: a standard deduction, childcare, court-ordered child support and arrearages paid to non-household members, a capped excess shelter expense, the medical expenses above \$35 for each S/D/V group member(s), and an uncapped excess shelter expense. BEM 554, p. 1.

Petitioner's FAP benefit group size of five justifies a standard deduction of \$244.00. RFT 255 (October 2023), p. 1. MDHHS properly included the standard deduction in Petitioner's household budget.

A S/D/V group that has a verified one-time or ongoing medical expense(s) of more than \$35.00 for a S/D/V person(s) will receive the Standard Medical Deduction (SMD). The SMD is \$165.00. If the group has actual medical expenses which are more than the SMD, they have the option to verify their actual expenses instead of receiving the SMD. BEM 554, p. 9. Petitioner did not submit for consideration out of pocket medical expenses. Therefore, MDHHS properly counted Petitioner's medical expenses at \$0.00.

Petitioner testified that the household does not pay any child support or dependent care expenses. Thus, MDHHS properly counted the group's non-shelter expenses to be \$244.00.

MDHHS calculated Petitioner's housing expenses from the report of \$1,261.75 for a mortgage and responsibility for paying utilities. Petitioner was credited with a standard heating/utility (h/u) credit of \$680.00. RFT 255, p. 1. Generally, the h/u credit covers all utility expenses and is the maximum credit available. MDHHS only credits FAP benefit groups with an "excess shelter" expense. The excess shelter expense is calculated by subtracting half of the adjusted gross income from the total shelter obligation. In Petitioner's case, this results in a negative number. Therefore, Petitioner's excess shelter amount is \$0.00.

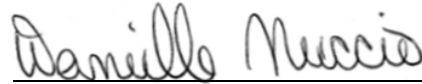
The FAP benefit group's net income is determined by subtracting the excess shelter expense from the group's adjusted gross income; doing so results in \$ [REDACTED] in net income for Petitioner's group. Petitioner's group size of five is subject to a net income limit of \$2,929.00. RFT 250 (October 2023), p. 1. Since Petitioner's total household income exceeds the net income limit for FAP, MDHHS properly closed Petitioner's FAP case.

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 closed Petitioner's FAP case due to excess net income.

DECISION AND ORDER

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

DN/mp



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 :

Interested Parties

MDHHS-Wayne-19-Hearings
N. Denson-Sogbaka
B. Cabanaw
M. Holden
MOAHR
BSC4

Via-First Class Mail :

Petitioner

[REDACTED] MI [REDACTED]