



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
SUZANNE SONNEBORN  
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA  
ACTING DIRECTOR

[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: January 3, 2024  
MOAHR Docket No.: 23-008327  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 December 27, 2023. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Valarie Foley, hearings facilitator.

**ISSUE**

The issue is whether MDHHS properly determined 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. From July 27 to November 16, 2023, Petitioner received the following gross biweekly income: \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] and \$ [REDACTED] \$ [REDACTED] and \$ [REDACTED]
2. As of September 2023, Petitioner received FAP benefits as the only member of a benefit group of one. Additionally, Petitioner was neither 60 years of age, disabled, nor a disabled veteran.
3. In September 2023, Petitioner received gross monthly Retirement, Survivors, Disability Insurance of \$1,149.

4. As of September 2023, Petitioner had no child support, medical, or dependent care expenses.
5. As of September 2023, Petitioner had a responsibility for heating and/or cooling expenses and monthly housing costs of no more than \$524.
6. Beginning November 2023, MDHHS issued \$23 in FAP benefits to Petitioner.
7. On November 15, 2023, Petitioner requested a hearing to dispute FAP eligibility beginning October 2023.

### **CONCLUSIONS OF LAW**

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. MA policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a reduction of FAP benefits to \$23.<sup>1</sup> Exhibit A, pp. 3-5. MDHHS did not present written notice of the reduction but credibly testified that Petitioner received the following monthly FAP issuances: \$195 in September 2023, \$224 in October 2023, and \$23 in November 2023. Petitioner's testimony acknowledged that FAP benefits were not reduced to \$23 until November 2023. Thus, Petitioner sought an administrative hearing concerning receiving \$23 in FAP benefits beginning November 2023.

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 is based on group size, countable monthly income, and relevant monthly expenses. During the hearing, MDHHS provided testimony of all relevant FAP budget factors.<sup>2</sup> All relevant budget factors were discussed with Petitioner.

MDHHS factored a benefit group of one person.<sup>3</sup> Petitioner acknowledged her benefit group size was correctly calculated by MDHHS.

MDHHS factored an unearned income of \$1,149. Petitioner acknowledged receiving \$1,149 in gross monthly RSDI. For FAP benefits, gross RSDI is countable. BEM 503

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<sup>1</sup> Petitioner applied for State Emergency Relief on [REDACTED] 2023. MDHHS explained that Petitioner's FAP eligibility was reduced after Petitioner reported having employment income on the SER application.

<sup>2</sup> MDHHS also provided budget documents for October 2023. Exhibit A, pp. 11-12. However, the budget documents included a higher countable earned income for Petitioner than the amount given from MDHHS's testimony.

<sup>3</sup> See BEM 212 for policies on determining group size for FAP benefits.

(January 2023) p. 29. Petitioner's unearned income was properly calculated to be \$1,149.

Petitioner was employed and received ongoing wages. Generally, MDHHS is to count gross wages.<sup>4</sup> BEM 501 (July 2022) p. 7. Generally, MDHHS is to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505 (October 2022) p. 6. MDHHS is to discard a pay from the past 30 days if it is unusual and does not reflect the normal, expected pay amounts. *Id.* MDHHS converts stable or fluctuating biweekly income to a monthly amount by multiplying the average income by 2.15. *Id.*, p. 8.

From July 27, 2023 to November 16, 2023, Petitioner received the following gross biweekly income: \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] and \$ [REDACTED] \$ [REDACTED] \$ [REDACTED] and \$ [REDACTED] MDHHS calculated an earned income of \$ [REDACTED] presumably, MDHHS did so by counting Petitioner's gross wages of \$ [REDACTED] and \$ [REDACTED] Notably, Petitioner's pay of \$ [REDACTED] on September 21, 2023 was at least twice every other gross payment received from July 27, 2023 to November 16, 2023. It is also notable that the \$ [REDACTED] wages received by Petitioner followed a pay period in which Petitioner was unpaid. Petitioner credibly explained that the \$ [REDACTED] pay she received covered four weeks of work because she was incorrectly unpaid the prior biweekly pay period; if true, then the \$ [REDACTED] wage payment is an unfair representation of Petitioner's employment income. MDHHS provided no evidence that \$ [REDACTED] was a representative wage payment.

Given the evidence MDHHS improperly calculated Petitioner's earned income by failing to discard an unrepresentative payment. As a remedy, Petitioner is entitled to a reprocessing of FAP eligibility with the \$ [REDACTED] wage payment being excluded. Only for purposes of simplifying the remaining budget analysis to see if other errors occurred, Petitioner's earned income of \$ [REDACTED] will be accepted as correct.

MDHHS allows for a 20% budget credit for timely reported income.<sup>6</sup> Applying the 20% credit results in \$828 in earned income (dropping cents). Adding the countable earned (\$ [REDACTED] and unearned income (\$1,149) results in a countable income of \$1,977.

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: shelter expenses (housing and utilities) up to a capped amount, dependent care costs, and court-ordered child support and arrearages paid to non-household members (see

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<sup>4</sup> Exceptions to counting gross wages include student earnings, striker benefits, census worker pay, flexible benefits, strikers worker pay, and earned income tax credits.

<sup>5</sup> The presumption is based on multiplying the average of the two pays by 2.15 resulting in a monthly countable income of \$ [REDACTED]

<sup>6</sup> MDHHS did not issue the 20% credit in an updated budget for October 2023. Exhibit A, pp. 11-12. Presumably, MDHHS did not credit Petitioner the 20% because it believes that Petitioner did not timely report the employment income.

*Id.*) An SDV group that has a verified one-time or ongoing medical expense(s) of more than \$35 for an SDV person(s) will receive the standard medical deduction (SMD) of \$165. BEM 554 (October 2022) p. 9. If the group has actual medical expenses which are more than the SMD, the group has the option to verify their actual expenses instead of receiving the SMD. *Id.*

Petitioner was a disabled individual; thus, Petitioner is potentially eligible for medical expenses deductions. Petitioner alleged having no medical expenses. Petitioner also did not allege to have dependent care or child support expenses. Thus, Petitioner's non-shelter expenses are \$0.

Petitioner's FAP benefit group size justifies a standard deduction of \$198 (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 (\$198) and countable non-shelter expenses (\$0) from the group's countable income (\$ [REDACTED]) results in an adjusted gross income of \$ [REDACTED].

MDHHS factored housing costs of \$524; Petitioner did not allege to have additional costs. MDHHS credited Petitioner with a standard heating/utility (h/u) credit of \$680. RFT 255 (October 2023) p. 1. Generally, the h/u credit covers all utility expenses and is the maximum credit available.<sup>7</sup> Adding Petitioner's housing and utility credits results in total shelter expenses of \$1,204.

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 \$315 (rounding up to nearest dollar).

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 \$1,464 in net income for Petitioner's group. A chart is used to determine the proper FAP benefit issuance.<sup>8</sup> RFT 260 (October 2023) pp. 1-5. Based on Petitioner's group size and net income, Petitioner's proper FAP issuance for November 2023 is \$23: the same amount calculated by MDHHS. Thus, MDHHS properly determined Petitioner's FAP eligibility beginning November 2023 other than improperly calculating Petitioner's earned income.<sup>9</sup>

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<sup>7</sup> 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.

<sup>8</sup> FAP benefit amounts can also be calculated by multiplying the net income by 30% and subtracting the amount from the maximum FAP issuance for the group.

<sup>9</sup> Petitioner should be aware that a recalculation of earned income may result in no change in the amount of FAP benefits received.

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's FAP eligibility beginning November 2023. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

(1) Reprocess Petitioner's FAP eligibility beginning November 2023 subject to the finding that MDHHS erred by factoring unrepresented wages of \$727.30 issued to Petitioner on September 21, 2023 in determining gross monthly earned income of \$ [REDACTED] and

(2) Issue notice and benefit supplements, if any, in accordance with policy.

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

CG/nr



**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**  
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**MDHHS-Wayne-19-  
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**Interested Parties**  
Wayne 19 County DHHS  
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M. Holden  
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B. Cabanaw  
MOAHR

**Via-First Class Mail :**

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]