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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: March 20, 2024
MOAHR Docket No.: 24-001425
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 March 14, 2024. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Danielle Moton, specialist.

ISSUE

The issue is whether MDHHS properly terminated 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. As of December 2023, Petitioner resided in a household that included her son aged over 18 years, [REDACTED] [REDACTED] (hereinafter, "Son") who was a full-time college student. Petitioner also resided with three minor children, which included her daughter, [REDACTED] [REDACTED] (hereinafter, "Daughter") who each received gross monthly Retirement, Survivors, Disability Insurance (RSDI) of \$555 per month.
2. As of December 2023, neither Petitioner nor her four children were over the age of 60 years, disabled, nor disabled veterans.

3. In January 2024, Petitioner received \$ [REDACTED] and \$ [REDACTED] in gross biweekly income.
4. In [REDACTED] 2024, Daughter turned [REDACTED] years old and received \$ [REDACTED] and \$ [REDACTED] in gross biweekly income.
5. As of January 2024, Petitioner had no day care or child support expenses.
6. As of January 2024, Petitioner reported to MDHHS a monthly housing obligation of \$1,647.12 and a responsibility to pay for heating and/or cooling.
7. On January 30, 2024, Petitioner requested a hearing to dispute a terminations of Medical Assistance (MA) benefits and an anticipated termination of FAP benefits.
8. On February 9, 2024, MDHHS terminated Petitioner's FAP eligibility beginning February 2024, due to excess net income based on a benefit group excluding Son.
9. On March 14, 2024, during an administrative hearing, Petitioner withdrew her dispute concerning MA benefits.

CONCLUSIONS OF LAW

The MA program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MA policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing, in part, to dispute a termination of MA benefits. Exhibit A, pp. 3-4. During the hearing, Petitioner acknowledged that MDHHS favorably resolved her dispute and that a hearing for MA was no longer needed.¹ Given the partial hearing request withdrawal, Petitioner's dispute over MA benefits will be dismissed.

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. FAP policies are contained in the BAM, BEM, and RFT.

¹ A favorable resolution of MA benefits was consistent with a Health Care Cover Determination Notice dated February 9, 2024, approving Petitioner for MA benefits beginning March 2024. Exhibit A, pp. 39-41.

Petitioner also requested a hearing to dispute an anticipated termination of FAP benefits.² Exhibit A, pp. 3-4. A Notice of Case Action dated February 9, 2024, stated that Petitioner's FAP eligibility ended February 2024 due to excess net income. Exhibit A, pp. 24-28

FAP eligibility is based on a client's net income. Net income, for purposes of FAP benefits, is based on the client's group size, countable monthly income, and relevant monthly expenses. BEM 556 outlines the factors and calculations required to determine net income. MDHHS presented a budget verifying most budget calculations and factors. Exhibit A, pp. 29-30. The termination notice included additional FAP budget factors. Exhibit A, p. 25. During the hearing, all relevant budget factors were discussed with Petitioner.

Petitioner resided in a household including herself and four children including Son. MDHHS testified that it determined Petitioner's FAP eligibility based on a benefit group of four persons which excluded Son due to his student status.

A person in student status must meet certain criteria to be eligible for FAP benefits. A person is in student status if he/she is:

- Age 18 through 49; and
- Enrolled half-time or more in either a:
 - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.
 - Regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245 (April 2021) pp. 3-4.

It was not disputed that Son was 18-49 years old. Petitioner's testimony acknowledged that Son was a full-time college student.³ The evidence established that MDHHS properly determined Son to be in student status.

For a person in student status to be eligible for FAP benefits, he or she must meet one of the following criteria:

- Receiving FIP benefits
- Enrolled in an institution of higher education as a result of participation in:
 - A JTPA program.
 - A program under section 236 of the Trade Readjustment Act of 1974 (U. S. C. 2296).
 - Another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.

² Generally, clients are not entitled to an administrative hearing for a future negative action (see BAM 600). In the present case, an exception was made for Petitioner, in part, because the expected action occurred (FAP case closure) and evidence was presented supporting the action.

³ Petitioner's acknowledgement was consistent with her application reporting that Son was a college student. Exhibit A, p. 10. In fact, two other children were also reported as college/vocational school students; however, both were under 18 years of age at the time of reporting.

- Self-employed for at least 20 hours per week and earning 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.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year (i.e. work study).
- Providing more than half of the physical care of a group member under the age of six.
- Providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate child care is not available to:
 - Enable the person to attend class and work at least 20 hours per week.
 - Participate in a state or federally-financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12. This includes a person who does not live with his or her spouse, who has parental control over a child who does not live with his or her natural, adoptive or stepparent.

BEM 245 (April 2021) pp. 3-5.

There was no evidence that Son was employed, engaged in work study or eligible for FAP benefits based on any other exceptions to student status. Given the evidence, MDHHS properly excluded Son as FAP benefit group due to student status. Thus, Petitioner's proper FAP benefit group size is four persons.⁴

It was not disputed that Petitioner's three children under 18 years of age, as of the application month, each received gross monthly RSDI of \$555.⁵ For FAP benefits, gross RSDI is countable. BEM 503 (January 2023) p. 29. In total, the benefit group received \$1,665 in gross monthly RSDI.

Petitioner submitted pay documents to MDHHS verifying she received gross biweekly income of \$██████ and \$██████ in January 2024. Exhibit A, pp. 20-22 For FAP benefits, MDHHS generally counts gross wages.⁶ BEM 501 (January 2020), p. 6. For non-child support income, MDHHS uses past income to project future income. BEM 505 (October 2017) p. 5. Stable or fluctuating biweekly employment income is converted to a monthly amount by multiplying the average income by 2.15. *Id.*, p. 8. Multiplying Petitioner's average biweekly gross employment income by 2.15 results in a monthly income of \$██████ (dropping cents).

⁴ See BEM 212 for policies on determining group size for FAP benefits.

⁵ Petitioner initially testified that RSDI stopped for one of the children. However, Petitioner later stated that the RSDI would stop in June 2024.

⁶ Exceptions to using gross wages include the following: earned income tax credits, flexible benefits, striker earnings, student disregards, and census worker earnings. BEM 501 (July 2017), p. 7. None of these exceptions apply to the present case.

Daughter also received employment income.⁷ Net biweekly pay checks listed income of \$173.37 on January 1, 2024 and \$313.63 on January 16, 2024; for purposes of this decision, the amounts will be accepted as gross.⁸ Exhibit A, pp. 22-23. Multiplying Daughter's average biweekly employment income by 2.15 results in a monthly income of \$523 (dropping cents).

Adding Petitioner's and Daughter's income results in a total monthly income of \$ [REDACTED]. MDHHS allows a 20% budget credit for timely reported employment income. Applying the credit results in countable employment income of \$ [REDACTED] (dropping cents).⁹ Adding the group's \$1,665 in RSDI results in a total countable income of \$ [REDACTED].

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 *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.*

It was not disputed that neither Petitioner nor her children were SDV; thus, medical expenses cannot be credited. There was no evidence that the benefit group had child support or dependent care expenses. Petitioner's non-shelter expenses are \$0.

Petitioner's FAP benefit group size justifies a standard deduction of \$208 (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 (\$208) and countable non-shelter expenses (\$0) from Petitioner's group's countable income (\$4,745) results in an adjusted gross income of \$4,537.

MDHHS credited Petitioner with monthly housing expenses of \$1,449.77; Petitioner claimed higher housing expenses. For purposes of this decision, the expenses reported by Petitioner on her application will be accepted as fact. Petitioner's application reported a monthly \$1,100 mortgage, annual property insurance of \$2,887.63, and annual

⁷ As of the disputed benefit month, Daughter was at least 18 years old. Thus, even if a student, her earnings are countable.

⁸ Pay dates of the 1st and 16th are indicative of biweekly pay dates. If Daughter is paid bimonthly rather than biweekly, Petitioner's group's income may be overestimated; however, any overcalculation would probably be offset by using net amounts.

⁹ A FAP budget stated that \$523 of the wages were not eligible for the credit. Exhibit A, pp. 29-30. Presumably, MDHHS denied the credit for Daughter's income because it was not reported on the application dated December 4, 2023. However, denying the credit is appropriate only for determining over-issuances and should never be used in future FAP budgets.

property taxes of \$3,677.84. Converting the insurance and taxes to a monthly amount resulting in \$1,647.12 in monthly housing expenses. MDHHS credited Petitioner with a standard heating/utility (h/u) credit of \$680. RFT 255 (October 2022) p. 1. Generally, the h/u credit covers all utility expenses and is the maximum credit available.¹⁰ Adding Petitioner's housing expenses and utility credits results in total shelter expenses of \$2,327 (dropping cents).

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 amount is \$0.

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. The net income limit for Petitioner's group size is \$2,500. RFT 250 (October 2023) p. 1. Because Petitioner's group's net income exceeds the net income limit, MDHHS properly terminated Petitioner's FAP eligibility beginning February 2024 due to excess net income.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner withdrew her dispute concerning a termination of MA benefits. Concerning MA benefits, Petitioner's hearing request is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's FAP eligibility beginning February 2024. The actions taken by MDHHS are **AFFIRMED**.

CG/nr



Christian Gardocki
Administrative Law Judge

¹⁰ 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.

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 :

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