



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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[REDACTED] MI [REDACTED]

Date Mailed: May 2, 2022
MOAHR Docket No.: 22-001460
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 April 27, 2022. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Joanna Rivera, supervisor.

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 March 2022, Petitioner was employed and an ongoing recipient of FAP benefits.
2. As of February 10, 2022, Petitioner received the following weekly gross employment pay amounts in the last 30 days: \$[REDACTED], \$[REDACTED], \$[REDACTED], and \$[REDACTED].
3. From February 25, through March 18, 2022, Petitioner received the following gross weekly employment income: \$[REDACTED], \$[REDACTED], \$[REDACTED], and \$[REDACTED].
4. On March 20, 2022, Petitioner reported to MDHHS a decrease in employment income.

5. On March 22, 2022, MDHHS calculated Petitioner's monthly employment income to be \$[REDACTED] and terminated Petitioner's FAP eligibility effective May 2022 due to excess net income.
6. On April 1, 2022, Petitioner requested a hearing to dispute the termination of FAP benefits.

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

Petitioner requested a hearing to dispute a termination of FAP benefits. Exhibit A, pp. 3-5. A Notice of Case Action dated March 22, 2022, stated that Petitioner's FAP benefits would end May 2022 due to excess net income. Exhibit A, pp. 24-28.

BEM 556 outlines the factors and calculations required to determine a client's net income for FAP benefits. Group size, countable monthly income, and relevant monthly expenses each determine a client's net income. MDHHS presented Respondent's FAP budgets from before and after the disputed benefit month listing all relevant calculations and budget factors. Exhibit A, pp. 19-23. During the hearing, all relevant budget factors were discussed with Petitioner. Petitioner only disputed the employment income calculated by MDHHS and limited her hearing request accordingly.

MDHHS calculated \$[REDACTED] for Petitioner's monthly employment income. MDHHS testified that the calculation was based on Petitioner's wages from January 14 through February 4, 2022. A pay stub and TheWorkNumber documents listed the following four gross pay amounts for Petitioner during the dates provided by MDHHS: \$[REDACTED], \$[REDACTED], \$[REDACTED], and \$[REDACTED]. Exhibit A, pp. 7-11.

For FAP benefits, MDHHS generally counts gross wages.¹ BEM 501 (July 2021) p. 7. For non-child support income, MDHHS is to use past income to prospect income for the future unless changes are expected. BEM 505 (November 2021) p. 6. 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. *Id.* 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.* Stable or fluctuating weekly employment income is converted to a monthly amount by multiplying the average income by 4.3. *Id.*, p. 8.

¹ 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.

Multiplying Petitioner's average weekly gross employment income from January 14 through February 4, 2022, by 4.3 results in a countable income of \$█: \$54 less than the amount calculated by MDHHS. MDHHS had no explanation for the discrepancy when asked during the hearing.

Petitioner contended that MDHHS additionally erred by relying on an unrepresentative pay of \$█.² Petitioner further contended that she called MDHHS on March 20, 2022, to report that her wages decreased. Petitioner's testimony was credible and consistent with decreased wages in the 30 days before her reporting date. Petitioner's testimony was also unrebutted by MDHHS. Given the evidence, Petitioner reported decreased wages to MDHHS on March 20, 2022.

For FAP benefits, MDHHS is to act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BEM 220 (November 2021) p. 7. Based on Petitioner's reporting, MDHHS should have updated Petitioner's FAP eligibility based on Petitioner's wages received in the 30 days before her reporting. Instead, MDHHS inexplicably relied on Petitioner's income from over one month earlier when it determined Petitioner's FAP eligibility on March 22, 2022. During the hearing, MDHHS stated that Petitioner's weekly gross pays in the 30 days before her report date were as follows: \$█, \$█, \$█, and \$█. Multiplying the average weekly gross pay by 4.3 results in a countable income of \$█ (dropping cents).

The evidence established that Petitioner reported a decrease in income on March 20, 2022. The evidence further established that MDHHS failed to act on Petitioner's reporting and incorrectly determined Petitioner's employment income. As a remedy, Petitioner is entitled to a reprocessing of FAP benefits based on her report of decreased employment income.³

DECISION AND ORDER

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

- (1) Reprocess Petitioner's FAP eligibility beginning May 2022 subject to the findings that:
 - a. MDHHS failed to establish that it properly calculated Petitioner's employment income;
 - b. MDHHS failed to act on a reported decrease of employment income by Petitioner on March 20, 2022; and
- (2) Issue notice and benefit supplements, if any, in accordance with policy.

² Petitioner's gross monthly employment income would be \$█ (dropping cents) if the \$█ pay was disregarded.

³ Petitioner should be aware that a reprocessing of FAP benefits does not guarantee that net income will not exceed the FAP income limit. However, Petitioner may again request a hearing if the yet to be made determination is disputed.

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

CG/mp



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

Email Recipients:

MDHHS-Oakland-6303-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

First-Class Mail Recipient:

[REDACTED]
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