



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: July 25, 2022
MOAHR Docket No.: 22-002731
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 on July 21, 2022 via teleconference. Petitioner appeared and represented herself. Valarie Foley, Hearings Facilitator, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly close Petitioner's Food Assistance Program (FAP) case?

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 was an ongoing recipient of FAP benefits.
2. On June 14, 2022, MDHHS sent Petitioner a Notice of Case Action, indicating that her FAP benefits would close, effective [REDACTED] 2022 ongoing (Exhibit A, p. 6). The reason for the closure was that the household net income exceeded the limit for a group-size of four (Exhibit A, p. 7). MDHHS budgeted \$[REDACTED] in unearned income for the household (Exhibit A, 7).
3. On or about [REDACTED], 2022, Petitioner requested a hearing to dispute the closure of her FAP case (Exhibit A, p. 3).
4. On July 5, 2022, MDHHS sent Petitioner a Notice of Case Action, indicating that her FAP benefit case was closed, effective [REDACTED] 2022 ongoing, due to net

income exceeding the income limit (Exhibit A, pp. 21-22). The amount of unearned income budgeted was \$[REDACTED] (Exhibit A, p. 22).

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 disputed the closure of her FAP benefits. In particular, Petitioner objected to the amount of unearned income that was budgeted for her household. MDHHS explained that the unearned income was based on Retirement, Survivors, Disability Insurance (RSDI) income received by members of the household and adoption subsidies that Petitioner received for her children. Petitioner disputed the inclusion of the adoption subsidy as unearned income. MDHHS issued Petitioner two notices regarding the closure of her FAP benefits due to excess income, effective [REDACTED] 2022. This decision addresses both determinations.

To determine eligibility for FAP, MDHHS considers all countable earned and unearned income available to the household. BEM 500 (April 2022), pp. 1-5. 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 (November 2021), p. 1. For the purposes of FAP, MDHHS must convert income that is received more often than monthly into a standard monthly amount. BEM 505, pp. 8-9.

Here, there was no evidence of earned income. Petitioner receives monthly unearned income, including RSDI and adoption subsidies. RSDI is a federal benefit administered by the Social Security Administration (SSA) that is available to retired and disabled individuals, their dependents and survivors of deceased workers. BEM 503 (April 2022), p. 29. MDHHS counts the gross RSDI benefit amount as unearned income. *Id.* An adoption subsidy is payment to an adopting parent of a child who would otherwise remain in foster care. BEM 503, pp. 2-3. There are two type of adoption subsidies, including support subsidies and medical subsidies. *Id.* A support subsidy is a payment for ongoing care and support of the child. Support subsidies are included as income for the purposes of FAP. Medical subsidies, on the other hand, are payments for medical expenses due to a physical, mental or emotional condition of the child, and are excluded as income because they are reimbursements. *Id.*

On June 14, 2022, MDHHS sent Petitioner a Notice of Case Action indicating that her FAP case would close July 1, 2022 ongoing due to excess net income (Exhibit A, p. 16). The FAP benefit rate was based unearned income of \$[REDACTED] for the household. MDHHS testified that after speaking with Petitioner, it determined that the adoption subsidies that she received for her minor children should also be included as unearned income. MDHHS recalculated Petitioner's income after adding the adoption subsidy and determined the household's unearned income was \$[REDACTED] (Exhibit A, p. 19). The unearned income was based on RSDI in the amount of \$[REDACTED] for four household members and adoption subsidies for three children in the amount of \$[REDACTED] (dropping the cents) (Exhibit A, p. 1). MDHHS sent Petitioner another notice on July 5, 2022, indicating that her FAP case was closed from [REDACTED] 2022 ongoing due to excess income (Exhibit A, p. 21).

At the hearing, MDHHS was questioned regarding whether the adoption subsidies represented support or medical subsidies. MDHHS could not adequately explain how it determined that the adoption subsidies were support subsidies, rather than medical subsidies. Petitioner stated her belief that she was receiving medical subsidies on behalf of the minor children due to their medical challenges.

MDHHS is required to obtain verifications when required by policy, or the information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BAM 130 (July 2021), p. 1. The questionable information might be from a client or from a third party. *Id.* To obtain a verification, MDHHS is required to send a DHS-3503 Verification Checklist (VCL), which tells the client what verification is required, how to obtain it and the due date. *Id.*, p. 3. Additionally, before determining eligibility, MDHHS must give clients a reasonable opportunity to resolve any discrepancies between their statements and information from another source. *Id.*, p. 9.

Given the uncertainty, MDHHS was required to request verification from Petitioner regarding the type of adoption subsidies that she received. No evidence was presented that MDHHS requested this information from Petitioner or from another source.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it terminated Petitioner's FAP benefits.

DECISION AND ORDER

Accordingly, MDHHS' decision is **REVERSED**.

MDHHS IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Petitioner's FAP case as of [REDACTED] 2022;

2. Begin recalculating the FAP budget for [REDACTED] 2022 ongoing, requesting verification regarding the type of adoption subsidies Petitioner receives, as necessary;
3. If Petitioner is eligible for FAP benefits, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED] 2022 ongoing; and
4. Notify Petitioner of its decision in writing.



LJ/tm

Linda Jordan
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 / Interested Parties

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Via-First Class Mail :

Petitioner

[REDACTED]
[REDACTED]
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