



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: November 10, 2022
MOAHR Docket No.: 22-004623
Agency No.: ██████████
Petitioner: ██████████

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 November 2, 2022. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Brad Reno, Eligibility Specialist and Hearings Facilitator.

ISSUE

Did MDHHS properly calculate Petitioner's Food Assistance Program (FAP) budget to determine her monthly amount of benefits?

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 for a group size of one. Petitioner is a Senior, Disabled, or Disabled Veteran (S/D/V) individual.
2. On August 31, 2022, Petitioner submitted a Change Report to add her adult son, ██████████ (Son) to her FAP group (Exhibit A, pp. 27-28).
3. Petitioner works for ██████████ (Petitioner Employer), earning \$██████ per month (Exhibit A, pp. 56-70).
4. Son works for ██████████. (Son Employer), earning \$██████ per hour, paid biweekly (Exhibit A, pp. 34-35; 79).
5. Petitioner receives \$██████ per month in unearned income from Retirement, Survivors, and Disability Insurance (RSDI).

6. Petitioner receives \$[REDACTED] per month in Supplemental Security Income (SSI) and \$[REDACTED] per month in State SSI Payments (SSP) benefits.
7. Son pays \$642.86 per month in child support, including arrearages, for two children.
8. Petitioner did not report paying any dependent care expenses.
9. Petitioner did not submit proof of any medical expenses to MDHHS.
10. Petitioner pays \$600.00 annually in property taxes and is responsible for paying for utilities.
11. On October 14, 2022, MDHHS issued a Notice of Case Action to Petitioner informing her that she was approved to receive \$23.00 in monthly FAP benefits for a group size of two, effective November 1, 2022 (Exhibit A, pp. 71-73).
12. On October 3, 2022, MDHHS received a timely submitted hearing request from Petitioner regarding the monthly amount of FAP she was approved to receive (Exhibit A, pp. 6-8).

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 determination of her monthly FAP amount. Petitioner was approved to receive \$23.00 per month in FAP benefits for a group size of two, effective November 1, 2022.¹

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

¹ Though Petitioner is only eligible for \$23.00 in monthly FAP benefits, MDHHS has issued the maximum FAP issuance for a client's group size since March 2020. The extra benefits are a result of a temporary policy during the COVID-19 pandemic. As the policy is only temporary, a full analysis of Petitioner's FAP eligibility is still appropriate.

determine Petitioner's FAP eligibility. During the hearing, all relevant budget factors were discussed with Petitioner (see Exhibit A, pp. 75-77).

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 RSDI, SSI, and SSP. RSDI is a federal benefit administered by the Social Security Administration that is available to retired and disabled individuals, their dependents, and survivors of deceased workers. In this case, MDHHS calculated Petitioner's unearned income amount from RSDI to be \$[REDACTED] monthly (see Exhibit A, p. 49). SSI is 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 \$[REDACTED] in monthly SSI income (see Exhibit A, p. 50). For an individual who lives in an independent living situation, State SSI Payments (SSP) are issued quarterly in the amount of \$[REDACTED]. BEM 503, pp. 36-37; BEM 660 (October 2021), pp. 1-2; RFT 248 (January 2022), p. 1. MDHHS counts the gross benefit amount of RSDI, SSI, and SSP as unearned income. BEM 503 (April 2022), pp. 29, 35, 36. Petitioner confirmed the amounts MDHHS budgeted are what she receives each month. Therefore, MDHHS acted in accordance with policy in determining that Petitioner receives \$[REDACTED] total in monthly unearned income.

Both Petitioner and Son receive 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 (November 2021), 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. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. Petitioner reported that she earns \$[REDACTED] per month from Petitioner Employer (see Exhibit A, pp. 56-70). MDHHS relied upon income information from the Work Number database and from the Employer-submitted Employment Verification to calculate Son's monthly income amount (see Exhibit A, pp. 34-35; 39-41; 71). Son is paid biweekly by Son Employer. MDHHS used Son's income from the pay periods ending August 26, 2022 and September 9, 2022, then converted to a standard monthly amount by averaging the gross earnings amount and multiplying by 2.15, totaling \$[REDACTED]. Petitioner confirmed that her earned income amount MDHHS relied upon is correct and did not dispute Son's earned income amount that MDHHS relied upon. MDHHS acted in accordance with policy in determining the household's earned income amount to total \$[REDACTED].

Petitioner confirmed that the household receives no other income. Therefore, MDHHS properly determined the total household income (earned and unearned) to be \$[REDACTED].

MDHHS uses certain expenses to determine the net income for FAP eligibility and benefit levels. BEM 554 (January 2022) 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.

MDHHS will reduce the gross countable earned income by 20 percent, known as the earned income deduction. BEM 550 (January 2022), p. 1. MDHHS correctly determined Petitioner is entitled to an earned income deduction of \$570.00.

The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. MDHHS properly used the standard deduction for a group size of two, effective October 1, 2022, of \$193.00. RFT 255 (October 2022), p. 1.

MDHHS allows a deduction for the following child support expenses: (i) the amount of court-ordered child support and arrearages paid by the household members to non-household members in the benefit month; (ii) court-ordered third party payments on behalf of non-household member; and (iii) legally obligated child support paid to an individual or agency outside the household, for a child who is now a household member, provided the payments are not returned to the household. BEM 554, p. 6. MDHHS will not allow more than the legal obligation if the client is up to date on their child support payments. BEM 554, p. 6. However, if the client is behind and making arrearage payments, MDHHS will allow the total amount paid even if it exceeds the court-ordered amount. BEM 554, p. 6. Current and arrearage child support expenses must be paid to be allowed. BEM 554, p. 6. In this case, MDHHS relied upon a Consolidated Inquiry search to calculate the total amount of child support, including arrearage payments, that Son pays each month to determine that Son pays \$642.86 monthly (see Exhibit A, pp. 32-33; 80). Petitioner confirmed that this amount is correct. Therefore, MDHHS acted in accordance with policy in calculating the household child support deduction.

As Petitioner qualifies as an S/D/V member, the group is entitled to deductions for verifiable medical expenses that the S/D/V member incurs in excess of \$35. BEM 554, p. 1. Petitioner did not submit any medical expenses for consideration in her FAP budget. Petitioner confirmed that the household pays no dependent care expenses. Therefore, MDHHS properly calculated Petitioner's household deductions to total \$835.00. MDHHS subtracted the total deductions from the total income amount to determine Petitioner's adjusted gross income to be \$[REDACTED].

MDHHS calculated Petitioner's housing expenses from her report of \$600.00 in annual property taxes and responsibility for paying utilities. FAP allowable expenses includes: (i) basic shelter expenses such as rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest

leading to ownership of the shelter occupied by the FAP group, *property taxes*, state and local assessments and insurance on the structure, and home repairs of a home which was substantially damaged or destroyed due to a natural disaster; (ii) the h/u standard or individual utility standards; (iii) utility installation fees charged by the utility provider, excluding deposits; and (iv) well/septic installation and maintenance. BEM 554, pp. 13-25 (Emphasis Added). Petitioner was credited with a standard heating/utility (h/u) credit of \$620.00. 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. Petitioner’s excess shelter amount is \$670.00.

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. A chart is used to determine the proper FAP benefit issuance. RFT 260 (October 2022) p. 21. Based on Petitioner’s group size and net income, Petitioner’s proper FAP benefit issuance should be \$58.00. It appears that MDHHS relied upon a group size of one to determine \$23.00 in monthly FAP benefits, rather than updating the group size to include Son. While MDHHS properly calculated Petitioner’s budget, they did not act in accordance with policy in determining Petitioner’s monthly FAP amount.

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 the MDHHS did not act in accordance with Department policy when it determined Petitioner to be eligible for \$23.00 in monthly FAP benefits.

DECISION AND ORDER

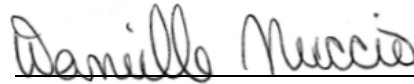
Accordingly, the Department’s decision is **REVERSED**.

THE DEPARTMENT 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. Recalculate the FAP budget for August 31, 2022 ongoing in accordance with Department policy and consistent with this Hearing Decision;
2. If Petitioner is eligible for supplements, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from August 31, 2022 ongoing;

3. Notify Petitioner of its decision in writing.

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 :

DHHS
MDHHS-Genesee-UnionSt-Hearings
D. Sweeney
M. Holden
MOAHR
BSC2

Via-First Class Mail :

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[REDACTED] MI [REDACTED]