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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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DIRECTOR

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Date Mailed: January 11, 2023
MOAHR Docket No.: 22-005242
Agency No.: ██████████
Petitioner: ██████████

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 January 4, 2023. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Colleen Corey, supervisor

ISSUES

The first issue is whether Petitioner timely requested a hearing to dispute a termination of Food Assistance Program (FAP) benefits beginning August 2022.

The second issue is whether MDHHS properly terminated Petitioner's FAP eligibility beginning December 2022.

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 July 2022, Petitioner was an ongoing recipient of FAP benefits with a benefit period certified through the end of the month.
2. Beginning August 2022, Petitioner's FAP eligibility expired after redetermination documents were not processed.
3. On an unspecified date, Petitioner reapplied for FAP benefits and was approved beginning September 2022.

4. As of September 2022, Petitioner was neither over 60 years old, disabled, nor a disabled veteran.
5. On October 25, 2022, Petitioner reported to MDHHS employment of 80 hours every two weeks.
6. On November 1, 2022, MDHHS terminated Petitioner's FAP eligibility beginning December 2022 due to excess gross income.
7. On November 7, 2022, Petitioner submitted to MDHHS documents verifying a pay rate of \$[REDACTED] hourly and receipt of the following biweekly employment income: \$[REDACTED] on October 20, 2022, and \$[REDACTED] on November 3, 2022.
8. On November 7, 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 (RFT).

Petitioner requested a hearing to dispute a termination of FAP benefits. Exhibit A, pp. 3-4. A Notice of Case Action dated November 1, 2022, stated that Petitioner's FAP case was closed beginning December 2022 due to excess gross income.

To be eligible for FAP benefits, a non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550 (January 2017) p. 1. An SDV group is one with a senior (a person over the age of 60 years), disabled, or disabled veteran. *Id.* A traditionally categorically eligible FAP group is one whose members are all Family Independence Program (FIP) and/or State Disability Assistance (SDA) and/or Supplemental Security Income recipients (SSI).¹ BEM 213 (October 2021) p. 1. Applicants and recipients are eligible for enhanced authorization for Domestic Violence Prevention Services (DVPS); in such circumstances, categorical eligibility is established by DVPS if gross income is at or below 200% of the federal poverty level (FPL) and they meet the asset test. *Id.*

¹ Petitioner's group is not traditionally categorically eligible because not all members received FIP, SDA, and/or SSI benefits.

For FAP benefits, MDHHS generally counts gross wages.² 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.* Stable or fluctuating biweekly employment income is converted to a monthly amount by multiplying the average income by 2.15. *Id.*, p. 8.

The notice of FAP case closure and a budget indicated that MDHHS calculated \$[REDACTED] in gross monthly income for Petitioner. Exhibit A, p. 10 and 17. MDHHS was unable to explain how \$[REDACTED] was calculated; however, enough evidence was presented to determine if Petitioner exceeded the gross income limit.

On October 25, 2022, Petitioner submitted to MDHHS a New Hire Client Report reporting employment of [REDACTED] hours every two weeks. When requesting a hearing, Petitioner submitted income documents verifying receipt of \$[REDACTED] on October 20, 2022, and \$[REDACTED] on November 3, 2022. Multiplying Petitioner's biweekly average wage by 2.15 results in gross countable monthly income of \$[REDACTED].

Petitioner testified that she stopped working in December 2022. The change in circumstance after case closure is irrelevant to determining if MDHHS properly projected Petitioner's income before Petitioner lost employment.

It was not disputed that Petitioner's benefit group size included only herself.³ The gross income limit for a group size of one is \$2,266.⁴ RFT 250 (October 2022) p. 1. Petitioner's income exceeded the gross income limit. Thus, MDHHS properly terminated Petitioner's FAP eligibility beginning December 2022.

Petitioner testified she also requested a hearing to dispute a closure of FAP benefits beginning August 2022.⁵ MDHHS testified it mailed Petitioner a Semi-Annual Contact Report which was returned to MDHHS on March 9, 2022, as undeliverable. The evidence suggested that Petitioner's FAP expired after July 2022 due to the Semi-Annual Contact Report was not returned.

² 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. The exceptions do not apply to a gross income test.

³ See BEM 212 for determining group size for FAP groups.

⁴ The MDHHS budget and notice of case closure indicated an income limit of \$1,473: the gross income limit for non-categorically eligible groups. MDHHS policy states that a group is only categorically eligible when income does not exceed the limit for categorically eligible groups. Thus, MDHHS presumably denied Petitioner's application based on the income limit for categorically eligible groups (\$2,266) despite its budget and notice of denial indicating otherwise.

notices include the non-categorical eligible income limit for categorically eligible groups.

⁵ It is debatable whether Petitioner requested a hearing to dispute a closure of FAP benefits beginning August 2022. Petitioner's hearing request made no mention of the closure. Exhibit A, pp. 3-4. Without proper notice, administrative hearing jurisdiction does not exist. For purposes of this decision, it will be assumed that Petitioner did provide MDHHS with notice of the dispute

Petitioner requested a hearing on November 7, 2022. A client's request for hearing must be received in the MDHHS local office within 90 days of the date of the written notice of case action.⁶ BAM 600 (August 2018) p. 6. A written notice of case closure stemming from an unreturned Semi-Annual Contact Report suggests that written notice of closure was issued no later than July 2022.⁷ Petitioner's hearing request was submitted more than 90 days after the end of July 2022. Thus, Petitioner's hearing request was not timely.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner failed to timely request a hearing to dispute a closure of FAP benefits beginning August 2022. Concerning a closure of FAP beginning August 2022, 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 December 2022. The actions taken by MDHHS are **AFFIRMED**.

CG/mp



Christian Gardocki

Administrative Law Judge

⁶ Generally, hearing requests must be submitted to MDHHS in writing, though FAP disputes may be requested orally.⁶ *Id.*, p. 2. The absence of a written reference to an oral hearing request by Claimant suggests no oral hearing request was made.

⁷ When a Semi-Annual Contact Report is not processed, MDHHS sends a Notice of FAP Closure (DHS-1046) in the month before benefit certification ends. BAM 210 (October 2021) p. 14.

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-Oakland-District-IV-Hearings
D. Sweeney
M. Holden
MOAHR
BS4

Via-First Class Mail :

Petitioner

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