



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: October 10, 2023
MOAHR Docket No.: 23-005428
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 October 4, 2023. Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Kalie Van Kirk, Assistant Payments Worker, and Elizabeth Trompen, Family Independence Manager.

At the hearing, Petitioner waived her right to receiving and reviewing the 50-page hearing packet prior to the hearing and the packet was entered into evidence as MDHHS's Exhibit A. MDHHS testified they will re-send Petitioner a hearing packet for her records.

ISSUE

Did MDHHS properly deny Petitioner's Food Assistance Program (FAP) application due to excess gross income?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED] 2023, Petitioner applied for FAP benefits for a group size of three, consisting of her two minor children and herself (Exhibit A, pp. 10-17). Petitioner is not a Senior, Disabled, or Disabled Veteran (S/D/V) individual.
2. Petitioner has earned income from employment at [REDACTED] (Employer) and is paid bi-weekly (Exhibit A, pp. 35-36).

3. Petitioner receives inconsistent child support only for one of her children (Exhibit A, pp. 38-40).
4. Petitioner reported that she pays \$1,289.00 monthly for rent and is responsible for paying for her own utilities each month (Exhibit A, p. 23).
5. On August 23, 2023, MDHHS issued a Notice of Case Action to Petitioner informing her that FAP application was denied due to excess gross income (Exhibit A, pp. 43-50).
6. On August 30, 2023, MDHHS received a verbal hearing request from Petitioner, disputing the denial of her FAP application due to excess gross income.

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 verbally requested a hearing to dispute the denial of her FAP application due to excess gross income¹.

FAP benefit amounts are determined by a client's net income. 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 determine Petitioner's FAP eligibility (see Exhibit A, pp. 29-31). During the hearing, all relevant budget factors were discussed with Petitioner.

MDHHS determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. 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 (October 2022) pp. 5-6. 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

¹ Clients may verbally request hearings to dispute ongoing FAP eligibility. BAM 600 (March 2021) p. 2.

4.3. BEM 505, pp. 8-9. In this case, MDHHS testified that they relied upon the employment verification received directly from Employer (see Exhibit A, pp. 35-36). Upon review, Employer provided one paycheck, showing that Petitioner worked 80 hours, earning \$[REDACTED] per hour, in a two-week period with 4.19 hours of overtime, paid at \$[REDACTED] per overtime hour. Employer also provided a statement that Petitioner works 40 hours per week each week, earning \$[REDACTED] per hour. Disregarding Petitioner's overtime pay, since it is inconsistent and not expected to continue, Petitioner earns \$[REDACTED] in gross income biweekly. When converted to a standard monthly amount, this totals to \$[REDACTED]. This is a lower amount than \$[REDACTED] that MDHHS relied upon. MDHHS testified that they calculated Petitioner's gross income based only upon Petitioner's earned income from Employer. Petitioner did express her concern that MDHHS was including income from Petitioner's prior employment. MDHHS testified that the prior income was not included in Petitioner's FAP budget. This error in calculating Petitioner's income resulted in a higher amount of income used to determine Petitioner's eligibility for FAP benefits. Therefore, MDHHS did not act in accordance with policy in calculating Petitioner's FAP budget, ultimately denying her FAP application due to excess gross income.

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 did not act in accordance with Department policy when it denied Petitioner's FAP application.

DECISION AND ORDER

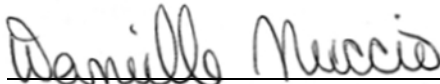
Accordingly, the Department's decision is **REVERSED**.

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. Reregister Petitioner's [REDACTED] 2023 FAP application;
2. Reprocess the application/recalculate the FAP budget for July 29, 2023 ongoing;
3. If Petitioner is eligible for benefits, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from July 29, 2023 ongoing;

4. 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 :

Interested Parties
MDHHS-Kent-Hearings
D. Sweeney
M. Holden
MOAHR
BSC3

Via-First Class Mail :


MI