



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 30, 2024
MOAHR Docket No.: 24-003203
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 25, 2024. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Princess Ogundipe, supervisor.

ISSUE

The issue is whether MDHHS properly denied 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. On February [REDACTED] 2024, Petitioner applied for FAP seeking benefits for two minor foster children who resided in the household. Petitioner additionally reported residing with a biological child, Petitioner's child's father who was also Petitioner's living-together partner (hereinafter, "LTP"), and a third foster child over the age of 18 years.
2. As of February 2024, Petitioner received gross biweekly wages of \$[REDACTED]
3. As of February 2024, Petitioner received gross biweekly foster care payments of \$[REDACTED]
4. As of February 2024, Petitioner's household had no senior, disabled, or disabled veteran (SDV) members.

5. As of February 2024, Petitioner had no dependent care or child support expenses.
6. As of February 2024, Petitioner's rent was \$[REDACTED]. Also, Petitioner had an obligation for heat and/or cooling costs.
7. On March [REDACTED] 2024, MDHHS denied Petitioner's FAP application due to excess gross income based on a benefit group of three persons.
8. On an unspecified date, MDHHS reprocessed Petitioner's FAP eligibility based on a group of five persons and determined Petitioner was ineligible based on excess gross and/or net income.
9. On March 21, 2024, Petitioner requested a hearing to dispute the denial 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 denial of FAP benefits. Exhibit A, pp. 6-8. Petitioner applied for FAP benefits on February [REDACTED] 2024. A Notice of Case Action dated March [REDACTED] 2024, stated that FAP benefits were denied due to excess gross income. Exhibit A, pp. 18-22.

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 individual, 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). BEM 213 (January 2023) p. 1. Non-traditionally categorically eligible groups are categorically eligible based on Domestic Violence Prevention Services (DVPS) but an income and asset test are required. *Id.*, p. 2. Categorical FAP groups with three or more members that exceed the gross and/or 100 percent net income limit, but whose gross income is at or below 200% of the Federal Poverty Level (FPL) and who meet the asset limit and all other FAP eligibility requirements may be eligible for benefits as low as \$1 as determined by the Food Assistance Issuance Tables in RFT 260. *Id.*, p. 4. It was not disputed that Petitioner's household had no SDV members and was a non-traditionally categorical eligible FAP benefit group.

Petitioner sought FAP benefits for only two household members: two minor foster children. The FAP group may choose to include or exclude a foster child whose foster parent is a group member. BEM 211 (March 2024) p. 1. If excluded, the foster child is not eligible for FAP as a separate group, and the foster care payment is not income to the group. *Id.* MDHHS policy essentially prevents foster parents from seeking FAP benefits only for foster children.

MDHHS contended that it was unable to isolate her benefit group to two foster children and factored a group size of five persons. MDHHS started with Petitioner's two minor foster children. Petitioner was added as a mandatory group member based on the above policy. Petitioner's child and LTP were added as mandatory group members because parents and children under 22 must be in the same benefit group (see BEM 212). Given the evidence, Petitioner's FAP benefit group is five persons.

It was not disputed that Petitioner was employed. TheWorkNumber documents listed biweekly gross wages for Petitioner of \$[REDACTED] Exhibit A, pp. 30-33. For FAP benefits, MDHHS generally counts gross wages.¹ BEM 501 (January 2024) p. 7. Stable or fluctuating biweekly employment income is converted to a monthly amount by multiplying the average income by 2.15. BEM 505 (October 2023) p. 8. Multiplying Petitioner's average biweekly income by 2.15 results in monthly gross wages of [REDACTED] (dropping cents). MDHHS gives 20% credits for timely reported employment income. Applying the credit to Petitioner's income results in countable wages of \$[REDACTED] (dropping cents).

It was not disputed that Petitioner received child foster care payments. MDHHS counts these payments as the unearned income of the foster child in the benefit group.² BEM 503 (April 2024) p. 5. It was not disputed that Petitioner received \$[REDACTED] in biweekly foster care income.³ Multiplying the income by 2.15 results in monthly gross foster care income of \$[REDACTED] (dropping cents). Adding Petitioner's countable wages to the foster care income results in a total gross income of \$[REDACTED]

The monthly gross income limit for a 5-person FAP group who is DVPS eligible is \$5,858.⁴ RFT 250 (October 2023) p. 1. Petitioner's countable gross income did not exceed the gross income limit. Thus, MDHHS improperly denied Petitioner's application due to

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 (January 2024) p. 7. The evidence did not suggest any applicable exceptions for the present case.

² A foster parent may choose to request FAP on behalf of a foster child. BEM 503 (April 2024) p. 5. When FAP program request status for foster child is no, MDHHS does not consider the child's needs or income in the FAP eligibility determination. *Id.*

³ It is assumed that the income was for the two minor foster children and not for the third foster child over the age of 18 years.

⁴ The Notice of Case Action stated that Petitioner exceeded the gross income limit of \$[REDACTED] Exhibit A, p. 19. The listed income limit is different for two reasons. First, the income limit on the notice is based on a group size of only three persons. Secondly, a gross income limit of \$[REDACTED] is 130% of the FPL and is applicable when a benefit group is not categorically eligible. Presumably, MDHHS determined Petitioner's FAP eligibility based on 200% of the FPL, and in compliance with policy, determined that the group was not categorically eligible because the group's income exceeded 200% of the FPL.

excess gross income. However, the possibility remains that Petitioner was properly denied due to excess net income.

FAP eligibility is based on a client's net income. Net income, for purposes of FAP benefits, is based on the client's group size, countable monthly income, and relevant monthly expenses. BEM 556 outlines the factors and calculations required to determine net income. MDHHS failed to present any budget or notice explaining what budget factors were factored. MDHHS did provide testimony about some of the factors. During the hearing, all relevant budget factors were discussed with Petitioner.

For net income, Petitioner's group size of 5 persons remains unchanged. Additionally, Petitioner's group's countable income of \$[REDACTED] remains unchanged.

MDHHS uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (January 2024) p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses: shelter expenses (housing and utilities) up to a capped amount, dependent care costs, and court-ordered child support and arrearages paid to non-household members. *Id.* An SDV group that has a verified one-time or ongoing medical expense(s) of more than \$35 for an SDV person(s) will receive the standard medical deduction (SMD) of \$165.⁵ *Id.* p. 9.

There was no evidence that Petitioner's FAP benefit group included any SDV members. Petitioner also denied having child support or dependent care expenses. Thus, Petitioner's non-shelter expenses are \$0.

Petitioner's FAP benefit group size justifies a standard deduction of \$244 (see RFT 255). The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction and countable non-shelter expenses are subtracted from the countable monthly income to calculate the group's adjusted gross income. Subtracting the standard deduction (\$244) and countable non-shelter expenses (\$0) from Petitioner's group's countable income (\$[REDACTED]) results in an adjusted gross income of \$[REDACTED].

MDHHS credited Petitioner with monthly housing expenses of \$1,400; Petitioner did not allege additional housing expenses. MDHHS credited Petitioner with a standard heating/utility (h/u) credit of \$680. RFT 255 (October 2022) p. 1. Generally, the h/u credit covers all utility expenses and is the maximum credit available.⁶ Adding Petitioner's housing expenses and utility credits results in total shelter expenses of \$[REDACTED].

⁵ If the group has actual medical expenses which are more than the SMD, the group has the option to verify their actual expenses instead of receiving the SMD. *Id.*

⁶ MDHHS allows additional credits for "actual utility expenses". Such expenses are only allowed for utility installation charges, water well installation and maintenance, and septic installation and maintenance. BEM 554 (October 2019) p. 15. There was no evidence of applicable exceptions.

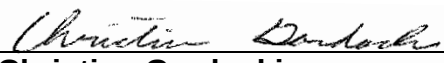
MDHHS only credits FAP benefit groups with an “excess shelter” expense. The excess shelter expense is calculated by subtracting half of Petitioner’s adjusted gross income from Petitioner’s total shelter obligation. Petitioner’s excess shelter amount is \$0.

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. The net income limit for Petitioner’s group size is \$2,929.⁷ RFT 250 (October 2023) p. 1. Because Petitioner’s group’s net income exceeds the net income limit, MDHHS properly denied Petitioner’s application for FAP benefits.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner’s application for FAP benefits dated February [REDACTED] 2024. The actions taken by MDHHS are **AFFIRMED**.

CG/th



Christian Gardocki
Administrative Law Judge

⁷ FAP eligibility can also be calculated by multiplying the net income by 30% and subtracting the amount from the maximum FAP issuance for the group. See RFT 260 for the maximum FAP benefit.

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
Jared Ritch
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Via-First Class Mail :

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