



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: January 18, 2019  
MAHS Docket No.: 18-013048  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, telephone hearing was held on January 15, 2019, from Lansing, Michigan. Petitioner represented himself. The Department was represented by Richkelle Curney. Huda Qandah acted as a translator during the hearing.

**ISSUE**

Did the Department of Health and Human Services (Department) properly determine Petitioner's eligibility for the Food Assistance Program (FAP)?

**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 is an ongoing Food Assistance Program (FAP) recipient.
2. On October 30, 2018, the Department received Petitioner's Redetermination (DHS-1010) form. Exhibit A, pp 5-11.
3. Petitioner reported to the Department on October 30, 2018, that he is responsible to pay rent in the monthly amount of \$500 and that he is responsible for to pay for heat and utilities separately from his rent. Exhibit A, p 6. Exhibit A, p 19.
4. On November 19, 2018, the Department notified Petitioner that he was eligible for a \$56 monthly allotment of Food Assistance Program (FAP) benefits effective December 1, 2018. Exhibit A, pp 20-21.

5. Petitioner receives monthly social security benefits in the gross monthly amount of \$1,512. Exhibit A, p 6.
6. The Department's representative testified that Petitioner's monthly allotment of Food Assistance Program (FAP) benefits was increased to \$71 effective December 1, 2018.
7. On December 4, 2018, the Department received Petitioner's request for a hearing protesting the Department's determination of his eligibility for the Food Assistance Program (FAP). Exhibit A, pp 2-3.

### **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.

All earned and unearned income available is countable unless excluded by policy. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. Department of Human Services Bridges Eligibility Manual (BEM) 500 (July 1, 2017).

The heat and utility standard covers all heat and utility costs including cooling, except actual utility expenses. FAP groups that qualify for the heat and utility standard do not receive any other individual utility standards. An FAP group which has a heating expense or contributes to the heating expense separate from rent, mortgage or condominium/maintenance payments must use the heat and utility standard. Department of Human Services Bridges Eligibility Manual (BEM) 554 (August 1, 2017), p 15.

Petitioner is an ongoing FAP recipient as a group of two. The Department concedes that Petitioner's income and expenses were not properly determined when his monthly allotment of FAP benefits were reduced to \$56. The Department redetermined Petitioner's eligibility and increased the monthly allotment of FAP benefits to \$71. This Administrative Law Judge was unable to verify the corrected budget from the evidence submitted on the record. Petitioner argued that the Department was not considering all of his expenses, although he did not identify any specific expenses that are being improperly excluded.

However, Petitioner's ability to articulate items in his FAP budget may have been impaired by his inability to speak English. Since the Department failed to sufficiently provide documentation supporting the corrected monthly allotment of FAP benefits, 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 Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's eligibility for the Food Assistance Program (FAP).

### **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:

Initiate a determination of the Petitioner's eligibility for the Food Assistance Program (FAP) effective December 1, 2018.

KS/dh

  
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**Kevin Scully**  
Administrative Law Judge  
for Robert Gordon, Director  
Department of Health and Human Services

**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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

Tara Roland 82-17  
8655 Greenfield  
Detroit, MI 48228

Wayne County (District 17), DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

**Petitioner**

[REDACTED]  
[REDACTED], MI [REDACTED]