



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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

Date Mailed: June 14, 2019  
MOAHR Docket No.: 19-005009  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Jeffrey Kemm

### **HEARING DECISION**

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 7 CFR 273.15, and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on June 12, 2019, from Lansing, Michigan. Petitioner, [REDACTED] [REDACTED] appeared and represented himself. Lead Worker, Dana Bongers, appeared with Eligibility Specialist, Bruce Ament, and Assistance Payments Supervisor, Gay Double, on behalf of the Department of Health and Human Services (Department). Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. An 8-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

### **ISSUE**

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit?

### **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 a FAP benefit recipient.
2. Petitioner has a household size of one.
3. Petitioner has gross unearned income of \$ [REDACTED] per month from social security.
4. Petitioner had a rent expense of \$301.00 per month through April 2019. Petitioner was not responsible for paying utilities in addition to his rent.

5. Petitioner has a rent expense of \$278.00 per month effective May 2019. Petitioner is responsible for paying utilities in addition to his rent.
6. Petitioner received a Low-Income Home Energy Assistance Payment (LIHEAP) payment prior to his certification.
7. On December 8, 2018, the Department issued a notice of case action to Petitioner to notify him that his FAP benefit was going to be decreased to \$28.00 per month effective January 1, 2019.
8. On May 3, 2019, Petitioner filed a hearing request to dispute his FAP benefit amount.

### **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.

A client has 90 days from the date of written notice of case action to file a hearing request to dispute it. BAM 600 (October 1, 2018), p. 6. Here, Petitioner filed a hearing request more than 90 days from the date of the Department's December 8, 2018, written notice of case action. Thus, Petitioner's hearing request was filed too late to dispute the Department's December 8, 2018, notice of case action. However, for FAP benefits, a client may file a hearing request at any time to dispute his current FAP benefit amount. BAM 600, p. 7. Therefore, Petitioner's hearing request will be considered regarding his current FAP benefit amount as of the date he filed his hearing request. Since Petitioner's FAP benefit amount as of the date he filed his hearing request was \$28.00 per month, the issue is whether the Department properly determined that Petitioner's FAP benefit amount was \$28.00 as of May 2019.

The Department determines a client's monthly FAP benefit amount by determining the client's group size and countable household income and then looking that information up in its applicable Food Issuance Table. BEM 212 (April 1, 2019), BEM 213 (January 1, 2019), BEM 550 (January 1, 2017), BEM 554 (April 1, 2019), BEM 556 (April 1, 2018), and RFT 260 (October 1, 2018). Here, there is no evidence that the Department did not properly determine Petitioner's FAP benefit. Petitioner did not present any evidence to establish that his household income or allowable expenses were different

than those used by the Department, and Petitioner did not present any evidence to establish that his group size was greater than that used by the Department. Based on a review of the budget used by the Department and the applicable Food Issuance Table, the Department used the correct standard deductions and correctly determined Petitioner's FAP benefit amount based on his countable household income and group size.

The Department determined Petitioner's FAP benefit amount was \$28.00 for May 2019. The Department used Petitioner's housing expense of \$301.00 per month, but Petitioner moved in May 2019 and his housing expense changed to \$278.00 per month. There is no evidence that the Department improperly used \$301.00 for Petitioner's rent expense. Petitioner had 10 days to report his change to the Department and then the Department had 10 days to act on it. There is no evidence that the Department had time to act on Petitioner's change in rent expense for May 2019, so I must find that the Department properly determined Petitioner's FAP benefit amount based on Petitioner's \$301.00 housing expense.

Petitioner expressed concern about the heat and utility standard that he noticed on the Department's budget. The heat and utility standard is a standard expense amount that is set by policy. It is the same amount for everyone who qualifies for the expense. It does not represent the actual amount a FAP household paid for utilities. The effect of the heat and utility standard is that it increases budgeted housing expenses, which reduces countable income and increases the maximum FAP benefit. Here, the Department budgeted the heat and utility standard for Petitioner when it determined his countable income. The Department's use of the heat and utility standard for Petitioner caused Petitioner's FAP benefit amount to be greater than it would have been without it.

### **DECISION AND ORDER**

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 did act in accordance with its policies and the applicable law when it determined Petitioner's food assistance benefit amount.

IT IS ORDERED the Department's decision is AFFIRMED.

JK/nr



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Jeffrey Kemm  
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 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

**DHHS**

Renee Olian  
322 Stockbridge  
Kalamazoo, MI  
49001

Kalamazoo County DHHS- via electronic mail

BSC3- via electronic mail

M. Holden- via electronic mail

D. Sweeney- via electronic mail

**Petitioner**

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