



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 26, 2019  
MOAHR Docket No.: 19-005137  
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, a telephone hearing was held on June 20, 2019, from Lansing, Michigan. Petitioner represented herself. The Department of Health and Human Services was represented by Sue Bigelow and Jeff Malett.

### **ISSUE**

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

### **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], 2019, the Department received Petitioner's Assistance Application as a household of three including Petitioner, her daughter, and a foster child. Exhibit A, pp 1-7.
2. Petitioner receives monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$ [REDACTED] Exhibit A, pp 10-11.
3. Petitioner's daughter receives monthly Supplemental Security Income (SSI) in the gross monthly amount of \$ [REDACTED] and State Supplemental Security Income (SSP) in the gross monthly amount of \$ [REDACTED]
4. Petitioner is responsible for properly taxes in the monthly amount of \$129.73.
5. On May 2, 2019, the Department notified Petitioner that her April 25, 2019, application had been denied. Exhibit A, pp 17-20.

6. On May 3, 2019, the Department received Petitioner's request for a hearing protesting the denial of her Food Assistance Program (FAP) application.

### **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.

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons resides in an eligible living situation. Parents and their children under 22 years of age who live together must be in the same group. The FAP group may choose to include or exclude a foster child whose foster parent is a group member. 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. Department of Human Services Bridges Eligibility Manual (BEM) 212 (April 1, 2019), pp 1-2.

Petitioner applied for FAP benefits as a household of three. Petitioner and her daughter received income. They are mandatory FAP group members due to their relationship and their income is countable towards the group's eligibility for FAP benefits. BEM 500. Petitioner reported a foster child in her home who does not receive any countable income. Petitioner included the foster child in her FAP benefits group, but excluding that child would not make her eligible for FAP benefits. Further, Department policy prohibits a foster child from applying for FAP benefits independently from the foster parent.

Petitioner's household of three receives a total gross monthly income of \$ [REDACTED] which was determined by adding the two monthly RSDI payments Petitioner receives and the SSI and SSP payments her daughter receives. The SSP benefits was determined by dividing that benefit that is paid quarterly by three months. Petitioner's adjusted gross income of \$ [REDACTED] was determined by reducing her gross monthly income by the \$158 standard deduction.

Petitioner is responsible for a monthly properly taxes expenses of \$129.73, which was determined by dividing her summer tax bill for \$296.97, and her winter tax bill for \$1,259.80 by 12 months. Petitioner's monthly tax obligation added to the \$543 standard

heat and utility deduction is less than 50% of her adjusted gross income. Therefore, Petitioner is not entitled to a shelter deduction. Department of Health and Human Services Bridges Eligibility Manual (BEM) 556 (April 1, 2018), p 5.

Petitioner's net monthly income is the same as her adjusted gross income. A group of three with a net income of \$ [REDACTED] is not entitled to any FAP benefits. Department of Health and Human Services Reference Table Manual (RFT) 250 (October 1, 2018), p 1.

Petitioner argued that her daughter's social security benefits are intended for her support only, and that since these benefits do not support the household, they should not be counted towards the household's eligibility for FAP benefits. Additionally, Petitioner argued that a foster child with no income should be eligible for FAP benefits independently from the household.

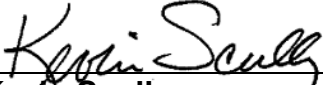
Petitioner's grievance centers on dissatisfaction with the Department's current policy. Petitioner's request is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

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 acted in accordance with Department policy when it determined that Petitioner is not eligible for Food Assistance Program (FAP) benefits based on her household's net monthly income.

### **DECISION AND ORDER**

Accordingly, the Department's decision is AFFIRMED.

KS/hb

  
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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 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**

Lori Teal  
201 Commerce Dr  
Ithaca, MI 48847

Gratiot County, DHHS

BSC2 via electronic mail

M. Holden via electronic mail

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**Petitioner**

[REDACTED]  
[REDACTED], MI [REDACTED]