



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: August 16, 2019  
MOAHR Docket No.: 19-007488  
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, an in-person hearing was held on August 14, 2019, from Flint, Michigan. Petitioner was represented by her mother and authorized hearing representative [REDACTED]. The Department was represented by April Nemec. The hearing was held concurrently with another hearing, MOAHR Docket No 19-006704.

### **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. On May 31, 2019, the Department received Petitioner's Redetermination (DHS-1010) form. Exhibit A, pp 7-16.
2. On June 11, 2019, the Department notified Petitioner that she was eligible for ongoing Food Assistance Program (FAP) benefits as a group of two with a \$176 monthly allotment as of July 1, 2019. Exhibit A, pp 17-21.
3. On June 28, 2019, the Department notified Petitioner that she was eligible for Food Assistance Program (FAP) benefits as a group of two with a \$129 monthly allotment as of August 1, 2019. Exhibit A, pp 22-27.

4. Petitioner 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] Exhibit A, pp 28-31.
5. Petitioner receives monthly child support in the gross monthly amount of \$ [REDACTED] Exhibit A, p 33.
6. On July 10, 2019, the Department received Petitioner's request for a hearing protesting the size of her monthly allotment of Food Assistance Program (FAP) benefits. Exhibit A, pp 5-6.

### **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 Department will use the average of child support payments received in the past three calendar months, unless changes are expected. Department of Health and Human Services Bridges Eligibility Manual (BEM) 505 (October 1, 2017), pp 4-5.

Petitioner was an ongoing FAP recipient on May 31, 2019, when the Department received her Redetermination (DHS-1010) form. Petitioner had been receiving FAP benefits as a group of two but had not reported the child support income she was receiving based on her belief that it was not required. This income was discoverable by the Department through its electronic databases and on June 28, 2019, the Department redetermined Petitioner's eligibility for ongoing benefits.

Petitioner receives SSI benefits in the gross monthly amount of \$ [REDACTED] and SSP benefits in the gross monthly amount of \$ [REDACTED]. Petitioner's SSP benefits are paid quarterly and the monthly amount was determined by dividing this amount by 3 months. Petitioner receives child support in the gross monthly amount of \$ [REDACTED] and Department records indicate that she had received the same amount of child support for more than three months. Petitioner's adjusted gross income of \$ [REDACTED] was determined by reducing her total gross monthly income by the \$ [REDACTED] standard deduction.

Petitioner is entitled to a \$191 deduction for shelter expenses. This deduction was determined by adding her monthly housing expenses of \$116 to the \$543 standard heat and utility deduction, then subtracting 50% of her adjusted gross income.

Petitioner's net income of \$ [REDACTED] was determined by reducing her adjusted gross income by her shelter deduction. A group of two with a net income of \$ [REDACTED] is entitled to a \$129 monthly allotment of FAP benefits. Department of Health and Human Services Reference Table Manual (RFT) 260 (October 1, 2018), p 11.

Petitioner's representative questioned whether child support income applied towards her eligibility for FAP benefits. The Redetermination (DHS-1010) form instructs assistance recipients to provide proof of child support payments over the last 90 day but that child support payments through the Michigan Child Support Program are not required.

All income is countable towards eligibility for benefits by BEM 500 unless specifically excluded by policy, and child support payments are not excluded from eligibility for FAP benefits. The evidence supports a finding that as of August 1, 2019, the Department was using the correct income amounts to determine Petitioner's eligibility for ongoing benefits.

Petitioner's representative questioned whether shelter expenses were being properly determined and the hearing record supports a finding that Petitioner is responsible for utility expenses separate from her monthly housing expenses. Petitioner is entitled to the standard heat and utility deduction, and she is already receiving that deduction.

Petitioner's representative questioned whether the reduction of the monthly allotment of FAP benefits should have been delayed pending the resolution of the hearing request.

A timely hearing request is a request received by the department within 10 days of the date the notice of case action was issued. When the 10th calendar day is a Saturday, Sunday, holiday, or other non-workday, the request is timely if received by the following workday. While waiting for the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. Upon receipt of a timely hearing request, reinstate program benefits to the former level for a hearing request filed because of a negative action.

Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2019), pp 25-26.

In this case, Petitioner's hearing request was not received within 10 days of the Department's written notice of the reduction of her monthly allotment. Further, BAM 600 instructs the Department that for FAP benefits, a continuation of the prior benefit level will apply only if the benefit period has not expired. BEM 600, p 26. In this case, the Department had redetermined Petitioner's eligibility for FAP benefits for a new benefit certification period following the processing of her May 31, 2019, Redetermination (DHS-1010) form.

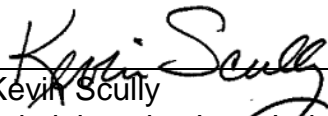
Further, if FAP benefits had remained at the previous level, the excess benefits would have to be returned to the Department because the Department has presented substantial evidence that the reduction of FAP benefits was a proper application of Department policy.

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 Petitioner's eligibility for the Food Assistance Program (FAP) as of August 1, 2019.

**DECISION AND ORDER**

Accordingly, the Department's decision is AFFIRMED.

KS/nr

  
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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**

Tamara Morris  
125 E. Union St 7th Floor  
Flint, MI  
48502

Genesee Union St. County DHHS- via  
electronic mail

BSC2- via electronic mail

M. Holden- via electronic mail

D. Sweeney- via electronic mail

**Authorized Hearing Rep.**

[REDACTED]  
MI

**Petitioner**

[REDACTED]  
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