



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: November 27, 2019  
MOAHR Docket No.: 19-011402  
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 November 20, 2019, from Lansing, Michigan. Petitioner was represented by herself. The Department of Health and Human Services was represented by Gregory Folsom and Lori Aumick.

**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 was an ongoing Food Assistance Program (FAP) recipient when the Department initiated a review of her eligibility for ongoing benefits by sending her a Redetermination (DHS-1010) form. Exhibit A, pp 4-11.
2. On October 3, 2019, Petitioner completed the Renew Benefits form. Exhibit A, pp 12-16.
3. Petitioner receives monthly earned income from employment in the gross monthly amount of \$ [REDACTED] Exhibit A, p 29.
4. Petitioner's daughter receives monthly Retirement, Survivors, and Disability Insurance (RSDI) in the gross monthly amount of \$ [REDACTED] Exhibit A, p 8.

5. Petitioner receives monthly child support in the gross monthly amount of \$ [REDACTED] Exhibit A, p 18.
6. On October 14, 2019, the Department notified Petitioner that she was eligible for a \$38 monthly allotment of Food Assistance Program (FAP) benefits as of November 1, 2019. Exhibit A, pp 23-27.
7. On [REDACTED] [REDACTED] [REDACTED] the Department received Petitioner's request for a hearing protesting the level of Food Assistance Program (FAP) benefits she is receiving. Exhibit A, p 38.

### **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).

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 must be in the same group. Department of Human Services Bridges Eligibility Manual (BEM) 212 (January 1, 2017), p 1.

An individual convicted (under Federal or State law) of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the

possession, use, or distribution of a controlled substance (as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C.802(6)) shall not be considered an eligible household member unless the State legislature of the State where the individual is domiciled has enacted legislation exempting individuals domiciled in the State from the above exclusion. 7 CFR 273.11(m).

Subject to federal approval, an individual is not entitled to the exemption in this section if the individual was convicted of 2 or more separate felony acts that included the possession, use, or distribution of a controlled substance and both acts occurred after August 22, 1996. 2019 PA 139 § 619 (Appropriations Act).

An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both convictions were for conduct which occurred after August 22, 1996. Department of Health and Human Services Bridges Eligibility Manual (BEM) 203 (May 1, 2018), p 4.

The Department continues to budget all income of a person disqualified for drug-related felonies towards the eligibility of the group for FAP benefits. Department of Health and Human Services Bridges Eligibility Manual (BEM) 550 (January 1, 2017), p 3.

Petitioner is an ongoing FAP recipient. Petitioner lives with two children and another person who is considered a mandatory member of the benefit group as the father of a child in the home. Although the child's father is a mandatory FAP group member, he is permanently disqualified from FAP due to his history of felony convictions involving controlled substances. Despite being permanently disqualified from FAP, the social security benefits the child's father receives are countable towards the benefit group's eligibility for FAP benefits. Further, in addition to being countable income for the benefit group, the gross amount of those benefits received by the child's father is countable, even though that amount may be more than the amount he actually receives because policy requires that the gross amount is used prior to any deductions are required by BEM 500.

Petitioner's household is made up of four people, but she is an ongoing FAP recipient as a group of three due to the disqualification. Petitioner receives earned income in the gross monthly amount of \$ [REDACTED] and the other members of the household, including the disqualified member, receive social security benefits and child support totaling \$ [REDACTED]. The amount counted may be more than the household actually receives because the gross amount is used before any deductions, as directed by BEM 500. Petitioner's adjusted gross income of \$ [REDACTED] was determined by reducing the household's totaling income by the \$161 standard deduction, a \$ [REDACTED] monthly expense for child support, and 20% of the gross earned income.

Petitioner is responsible for monthly housing expenses of \$186.95, and is responsible for paying utilities. Since Petitioner's shelter expenses are less than 50% of the household's adjusted gross income, she is not eligible for any deduction for shelter expenses.

Petitioner's monthly net income is the same as her adjusted gross income because she is not entitled to a shelter deduction. A group of three with a net income of \$ [REDACTED] is eligible for a \$38 monthly allotment of FAP benefits. Department of Health and Human Services Reference Table Manual (RFT) 260 (October 1, 2018), p 23.

Petitioner did not offer any evidence to refute the Department's determination of the household countable gross income, but disputed that the Department was counting income not available to the household, and counting the income of a person not eligible for benefits.

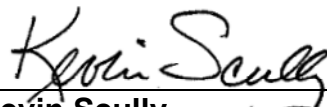
However, the evidence supports a finding that the Department determined Petitioner's eligibility for FAP benefits in accordance with Department policy.

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 November 1, 2019.

**DECISION AND ORDER**

Accordingly, the Department's decision is AFFIRMED.

KS/hb

  
\_\_\_\_\_  
**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**

Gregory Folsom  
4809 Clio Road  
Flint, MI 48504

Genesee County (Clio), DHHS

BSC2 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

**Petitioner**

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