



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: September 24, 2019  
MOAHR Docket No.: 19-009121  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Alice C. Elkin**

**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; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on September 19, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. Her mother, ██████████ was a witness on her behalf. The Department of Health and Human Services (Department) was represented by ██████████, Family Independence Manager.

**ISSUE**

Did the Department properly calculate Petitioner's 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. Petitioner lives with her two minor children.
2. One of Petitioner's minor children is eligible for monthly Supplemental Security Insurance (SSI) benefits of \$771 but \$71 is currently being withheld by the Social Security Administration (SSA) to recover an overpayment. The child also receives \$42 in quarterly State SSI Payments (SSP) from the State of Michigan.
3. Petitioner was an ongoing recipient of FAP.

4. On August 5, 2019, Petitioner applied for FIP (Exhibit A, pp. 6-11). In the application, Petitioner alleged that she was disabled and intended to apply for Social Security disability benefits (Exhibit A, p. 9).
5. On an unspecified date, the Department denied Petitioner's FIP application.
6. On August 14, 2019, the Department received Petitioner's hearing request along with medical documentation concerning her alleged disability.

### **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).

Petitioner requested a hearing disputing the Department's actions concerning her FAP case and her FIP application.

#### **FIP**

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

Although the Department had initially denied Petitioner's FIP application, the Department testified that upon receipt of Petitioner August 14, 2019 hearing request that included medical documentation in support of her alleged disability, it reprocessed the application and approved her for FIP. The Notice of Case Action sent to Petitioner on August 16, 2019 notifying her that she was approved for monthly FIP benefits of \$403 effective August 16, 2019 and Petitioner's testimony that she had received FIP benefits beginning August 2019 corroborated the Department's testimony.

Because Petitioner lives with her two minor children, one of which was an SSI recipient, she has a two-person FIP group and is an eligible grantee. BEM 210 (April 2019), pp. 5, 8. As such, the maximum monthly FIP she was eligible for was \$403. RFT 210 (April 2017), p. 1. Because the Department approved Petitioner for the maximum FIP benefit allotment she was eligible to receive, it resolved the issue that resulted in Petitioner's August 14, 2019 hearing request. Therefore, Petitioner's FIP issue is dismissed.

Although there was evidence presented at the hearing that the Department had sent Petitioner a Notice of Case Action on September 7, 2019 notifying her that her FIP case was closing due to her failure to participate in the PATH program, because that

Department action arose after Petitioner's August 14, 2019 hearing request, it was not properly presented as an issue at the September 19, 2019 hearing. Petitioner was advised to request a new hearing with respect to the September 7, 2019 notice if the issue was not resolved to her satisfaction.

### **FAP**

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.

Petitioner also requested a hearing concerning her FAP case. At the hearing, she testified that she was specifically disputing the FAP allotment she received from February 2019 to April 2019, contending that it should have been greater than what she received. A client has 90 calendar days from the date of a written notice of case action to request a hearing to dispute the action taken by the Department in the notice. BAM 600 (July 2019), p. 6. At the hearing, the Department testified that in the 90 days preceding the August 14, 2019 date upon which Petitioner requested a hearing, it had sent Petitioner the following notices concerning her FAP case: a May 16, 2019 notice, notifying her of a monthly FAP increase to \$292; a June 1, 2019 notice, notifying her of a FAP increase to \$314; a July 1, 2019 notice, notifying her that she was required to register to work; an August 1, 2019 notice decreasing her FAP to \$258 effective September 1, 2019; and the August 16, 2019 notice decreasing her FAP to \$229 effective September 1, 2019. These are the only FAP notices Petitioner timely appealed through her August 14, 2019 request for hearing. Thus, the issue of the FAP benefits from February 2019 to April 2019 were not timely presented for hearing.

Because the current level of benefits are appealable, the calculation of Petitioner's \$228 monthly FAP allotment was considered at the hearing. See BAM 600, p. 7. At the hearing, the financial information in the notice used to calculate Petitioner's FAP benefits was reviewed. The notice showed that the Department budgeted \$1188 in monthly unearned income. The Department explained that this was the sum of the \$403 FIP monthly allotment, \$771 SSI received by one of Petitioner's minor children, and the \$14 in SSP received by the child (based on the \$42 quarterly payment). BEM 503 (April 2019), pp. 15, 32-34. Petitioner explained that her child was only receiving a partial SSI payment. The Department confirmed in reviewing the Single Online Query (SOLQ) for the child that, although she was eligible for \$771 in monthly SSI, she was being paid \$693.10, with SSA withholding \$77.90 monthly for repayment of an overpayment.

Department policy provides that amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income and are excluded as income. BEM 500 (July 2017), p. 6. However, with respect to current

SSA-issued SSI, amounts withheld to recoup overpayment due to an intentional program violation (IPV) **are** included in gross income. BEM 503, p. 33; BEM 500, p. 6. The recouped SSI is counted only if IPV information is volunteered by the SSI recipient or other reliable source; the Department may not initiate any contacts. BEM 503, p. 33; BEM 500, p. 6. In this case, the Department did not establish that SSA recouped from Petitioner's child's SSI was due to an IPV. Because the Department did not testify that it was budgeting the full SSI payment because the overpayment was due to an IPV, the Department failed to show that it properly considered the full \$771 SSI payment in calculating Petitioner's household's unearned income.

Because Petitioner's child was disabled, for FAP purposes Petitioner had a senior/disabled/veteran (SDV) household member, and the FAP group was eligible for the following deductions to income: the standard deduction based on group size; a child care deduction; a child support deduction; a medical expense deduction for all out-of-pocket expenses in excess of \$35 for the SDV group member; and an excess shelter deduction. See BEM 550 (January 2017), pp. 1-2; BEM 554 (April 2019), p. 1; BEM 556 (July 2019), pp. 4-6. The budget on the notice of case action showed the following deductions: a \$158 standard deduction; \$83.17 monthly housing expense, and a \$543 heat/utility (h/u) standard deduction.

Based on the three members in Petitioner's household (Petitioner and her two minor children), for FAP purposes, there were three FAP group members. BEM 212 (July 2019), p. 1. Based on a three-person FAP group, the standard deduction was properly identified as \$158. RFT 255, p. 1. Petitioner acknowledged that she did not have child care or child support expenses and her disabled child did not have out-of-pocket medical expenses. Thus, the budget properly did not identify any expenses for those items. Petitioner did not dispute the \$83.17 in monthly housing expenses that the Department used. Based on her home ownership, she was entitled to the \$453 heat and utility standard, the most beneficial utility standard available to clients, as shown on the budget. BEM 554, p. 15; RFT 255 (October 2018), p. 1. Therefore, the Department properly considered the correct financial information in calculating Petitioner's deductions to her income.

Therefore, with respect to Petitioner's FAP case, based on the foregoing, the issue of Petitioner's FAP benefits for February 2019 through April 2019 was not properly preserved for hearing. With respect to the current calculation of FAP benefits, the Department showed that it considered the correct information in calculating the deductions to income but did not satisfy its burden of showing that it acted in accordance with Department policy in calculating the FAP group's income.

### **DECISION AND ORDER**

Because the Department resolved the FIP matter raised by Petitioner in her August 14, 2019 hearing request prior to hearing, the FIP issue is **DISMISSED**.

The Department's FAP 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:

1. Recalculate Petitioner's FAP benefits for September 1, 2019 ongoing;
2. If eligible, issue supplements to Petitioner for FAP benefits she should have received but did not from September 1, 2019 ongoing; and
3. Notify Petitioner in writing of its decision.



AE/tm

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**Alice C. Elkin**

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**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

cc: FIP (PATH) – [REDACTED]  
FAP: [REDACTED]  
AP Specialist-Wayne County