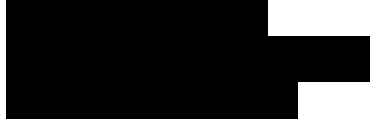




GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR



Date Mailed: March 9, 2020  
MOAHR Docket No.: 19-013795  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

### **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 March 5, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Lekeitia Cokley, Family Independence Specialist and Raychael May, Family Independence Manager.

### **ISSUE**

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit amount for January 2020?

### **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 FAP recipient.
2. On January 3, 2020, the Department received a New Hire Client Notice providing income information for Petitioner's children's father/Living Together Partner (LTP) (Exhibit A, pp. 13-16).
3. Petitioner's household consisted of herself, her LTP and their two children.
4. Petitioner had income from employment (Exhibit A, pp. 25-25).

5. On January 3, 2020, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefit amount was decreasing to \$49 for the month of January 2020 (Exhibit A, pp. 6-10).
6. On [REDACTED], 2020, Petitioner submitted a request for hearing disputing the Department's actions.

### **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.

In this case, Petitioner testified that she was disputing the amount of benefits she received in January 2020. The Department increased Petitioner's FAP benefits effective February 1, 2020. Petitioner was satisfied with the amount of FAP benefits she received in February 2020.

Petitioner was an ongoing FAP recipient. On January 3, 2020, the Department received a New Hire Client Notice for Petitioner's LTP. The Department added Petitioner's LTP's income into Petitioner's FAP budget. As a result, the Department issued a notice informing Petitioner that her FAP benefits were decreasing to \$49 in January 2020.

At the hearing, the Department provided pay statements from Petitioner's LTP's employment, as well as a Work Number report from Petitioner's income from employment. The Department did not provide a budget to establish the calculation of Petitioner's FAP benefit amount. The Department was advised to submit the budget subsequent to the hearing. Upon review of the budget, The Department included a net income amount of \$2,760 (Exhibit A, pp. 34-35). However, only \$1,912 of the earned income was designated as eligible for the earned income deduction.

When calculating a FAP budget, the Department applies various deductions to household income. BEM 556 (January 2020), pp. 2-3. The Department will reduce the total earned income by 20 percent. BEM 556, p. 3. For client error overissuances due, at least in part, to failure to report earnings, the Department does not allow the 20 percent earned income deduction on the unreported earnings. BEMBAM 720 (October 2017), p. 10. Not allowing the 20 percent earned income deduction is used by

recoupment specialists only when determining the overissuance amount for the failure to report earned income timely. BEM 556, p. 3.

The Department did not provide any evidence or explanation as to why it determined that part of Petitioner's entire household earnings were not eligible for the earned income deduction. Per policy, the removal of the earned income deduction is only supposed to occur when determining the amount of overissued FAP benefits. As such, the Department failed to establish that it properly calculated Petitioner's earned income. As it follows, the Department failed to establish that it properly calculated Petitioner's FAP benefit amount.

### **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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's FAP benefit amount for January 2020.

Accordingly, the Department's 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. Redetermine Petitioner's FAP eligibility for January 2020;
2. If Petitioner is eligible for additional FAP benefits, issue supplements she is entitled to receive; and
3. Notify Petitioner of its decision in writing.

EM/cg



---

**Ellen McLemore**

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

**Via Email:**

MDHHS-Wayne Pathways to Potential  
M. Holden  
D. Sweeney  
BSC4- Hearing Decisions  
MOAHR

**Petitioner – Via First-Class Mail:**

