



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]  
Date Mailed: January 11, 2021  
MOAHR Docket No.: 20-006876  
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 January 7, 2021, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearing Facilitator.

**ISSUE**

Did the Department properly determine Petitioner's Food Assistance Program (FAP) eligibility?

**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. In [REDACTED] 2020, Petitioner completed a mid-certification review.
3. On October 7, 2020, the Department sent Petitioner a Notice of Case Action informing her that she was approved for FAP benefits in the monthly amount of \$115 effective November 1, 2020, ongoing (Exhibit A, pp. 10-14).
4. On November 2, 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 was an ongoing FAP recipient. In [REDACTED] 2020, Petitioner completed a mid-certification review related to her FAP benefit case. Petitioner had previously been receiving the heat/utility (h/u) standard deduction for paying her gas heat. However, the Department discovered that Petitioner's gas heat expense was included in her rent (Exhibit A, p. 16). The Department determined that Petitioner was only responsible for her non-heat electric utility (Exhibit A, p. 5). The Department removed the h/u standard deduction and provided Petitioner the standard deduction for electric and telephone utilities (Exhibit A, pp. 6-7). As a result, Petitioner's FAP benefit amount decreased to \$115 per month.

The heat/utility (h/u) standard covers all heat and utility costs including cooling expenses. BEM 554, p. 15. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. BEM 554, p. 15. FAP groups whose heat is included in the cost of their monthly rent may still be eligible for the h/u standard if: they are billed for excess heat payments from their landlord; they have received a home heating credit in an amount greater than \$20 for the applicable period; or they have received a Low-Income Home Energy Assistance Payment (LIHEAP) or a LIHEAP payment was made on their behalf in an amount greater than \$20 for the applicable period. BEM 554, pp. 15-19. Additionally, FAP groups who pay cooling (including room air conditioners) are eligible for the h/u standard if they verify their responsibility to pay for non-heat electric expenses. BEM 554, p. 16. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the costs of other utility expenses are eligible for the individual utility standards. BEM 554, p. 21.

At the hearing, Petitioner acknowledged that her gas heat is an expense that is included within her monthly rental payment. However, Petitioner stated that she has an in-room air conditioner. Petitioner testified that she is responsible for her non-heat electric. Additionally, the Department provided verification that Petitioner pays her non-heat electric. Per policy, Petitioner is eligible for the h/u standard. Therefore, the Department did not act in accordance with policy when it removed the h/u standard from Petitioner's

FAP budget. As it follows, the Department did not act in accordance with policy when it determined Petitioner's FAP eligibility.

**DECISION AND ORDER**

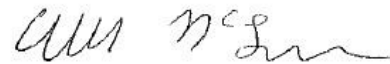
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it determined Petitioner's FAP eligibility.

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 as of November 1, 2020, ongoing;
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/jem



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**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-19-Hearings  
BSC4-HearingDecsions  
M. Holden  
D. Sweeney  
MOAHR

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

[REDACTED]  
[REDACTED]  
[REDACTED]