

RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
Date Mailed: November 29, 2018  
MAHS Docket No.: 18-011102  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** John Markey

**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 November 28, 2018, from Lansing, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Brandi Eiland, Hearings Facilitator. During the hearing, 33 pages of documents were offered and admitted as Exhibit A, pp. 1-33.

**ISSUE**

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefits for November of 2018, ongoing?

**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 is ongoing FAP recipient in a FAP group of one.
2. On September 4, 2018, the Department issued to Petitioner a Redetermination to gather relevant information from Petitioner regarding Petitioner's ongoing eligibility for FAP benefits. Exhibit A, pp. 4-11.
3. On October 3, 2018, Petitioner returned the completed Redetermination to the Department. On the completed Redetermination, Petitioner indicated that he relocated to a place called [REDACTED]. Petitioner also indicated that he had to pay monthly rent and was responsible for electricity. Exhibit A, pp. 4-11.

4. On October 4, 2018, the Department issued to Petitioner a Shelter Verification form that was required to be filled out by the [REDACTED] manager and returned by October 15, 2018. Exhibit A, pp. 12-13.
5. On October 12, 2018, the manager of the [REDACTED] returned to the Department the completed Shelter Verification form. On the form, it was reported that Petitioner paid \$214 per month in rent, which included water/sewer, trash removal, and heating/cooling. Petitioner was reported to be responsible for electricity and the additional electricity used for air conditioning or fan usage to cool the home. Exhibit A, pp. 12-13.
6. On October 16, 2018, the Department issued to Petitioner a Notice of Case Action informing Petitioner that he was eligible for \$15 per month in FAP benefits, effective November 1, 2018. This was a substantial reduction from his previous amount of benefits. Most of the reduction was on account of the Department removing from Petitioner's FAP budget the heat/utility (h/u) standard. Exhibit A, pp. 1, 17-22.
7. On October 22, 2018, Petitioner submitted to the Department a request for hearing challenging the Department's reduction of his monthly FAP benefits, effective November 1, 2018.

### **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 objects to the Department's redetermination of his monthly FAP benefits, effective November 1, 2018. The cause of the substantial reduction of Petitioner's FAP benefits was the result of the Department removing from the FAP budget the h/u standard based on the information reported to the Department during the redetermination process.

The Department calculated Petitioner's FAP benefit amount for November of 2018 ongoing by taking into account Petitioner's reported and verified income and expense information. Petitioner had total income of \$838, all of which was unearned. The

standard deduction of \$158 was then taken out, resulting in adjusted gross income of \$680. Petitioner did not report any child care, medical, or child support expenses. Thus, those deductions are not applicable.

However, Petitioner is eligible for the excess shelter deduction. Petitioner has housing costs of \$214. Petitioner is responsible for electricity, which he used for cooling the apartment with fans and occasionally a window air conditioning unit. "FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if they verify they have the responsibility to pay for non-heat electric." BEM 554 (August 2017), p. 16. As Petitioner verified he has the responsibility to pay for non-heat electric and he pays for cooling via the electric charges for running a fan and occasionally an air conditioner, he is eligible for the h/u standard, which was \$543 for November 2018. RFT 255 (October 2018), p. 1. FAP groups that qualify for the h/u standard do not receive any other individual standards. BEM 554, p. 15.

Thus, Petitioner's total monthly shelter expenses amount to \$757. The excess shelter deduction is calculated by subtracting from the \$757 one half of the adjusted gross income of \$680, which is \$340. The remaining amount, if it is greater than \$0, is the excess shelter deduction. In this case, the remaining amount is \$417. Petitioner's net income is calculated by subtracting the excess shelter deduction (\$417) from the adjusted gross income (\$680). That leaves a net income of \$263.

The Food Assistant Issuance Table shows \$113 in monthly FAP benefits for \$263 net income for a household of one. RFT 260 (October 2018), p. 4. This is not the amount determined by the Department.

The Department's position is that Petitioner was not responsible for any of the heating or cooling expenses. Acting upon that conclusion, the Department did not apply the h/u standard, resulting in a much lower excess shelter deduction calculation. That position is belied by the record. Petitioner pays for electric, which includes cooling devices. That expense has been verified. Thus, under BEM 554, Petitioner must be given the benefit of having the h/u standard incorporated into the calculation of his monthly FAP benefits. Because the Department improperly denied Petitioner the benefit of the h/u standard, the Department is hereby reversed and ordered to issue Petitioner a supplement for the month of November 2018 and recalculate Petitioner's monthly FAP benefits for December 2018, ongoing.

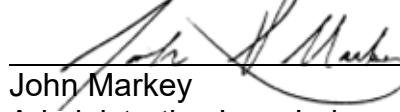
### **DECISION AND ORDER**

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. Issue to Petitioner a FAP supplement to cover the shortage between the amount of FAP benefits already issued to Petitioner for November 2018 and the amount (\$113) calculated above;
2. Recalculate Petitioner's monthly FAP benefits for December 2018, ongoing, and in making those calculations, apply the h/u standard so long as Petitioner's housing and bill situation remains unchanged;
3. If Petitioner is found to be eligible for any additional benefits, issue to Petitioner a supplement; and
4. Notify Petitioner in writing of its decision.

JM/nr



John Markey  
Administrative Law Judge  
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

Kim Cates  
1399 W. Center Road  
Essexville, MI  
48732

Bay County DHHS- via electronic mail

BSC2- via electronic mail

M. Holden- via electronic mail

D. Sweeney- via electronic mail

**Petitioner**

