



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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

Date Mailed: March 19, 2019  
MAHS Docket No.: 19-001422  
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, an in-person hearing was held on March 13, 2019, from Southfield, Michigan. Petitioner was present with her husband, [REDACTED]. The Department of Health and Human Services (Department) was represented by Christine Brown, Hearing Facilitator.

**ISSUE**

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit eligibility for the period of January 1, 2019 through February 28, 2019?

Did the Department properly close Petitioner's FAP benefit case effective March 1, 2019, 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 was an ongoing FAP recipient.
2. In December 2018, Petitioner completed a redetermination related to her FAP benefit case (Exhibit A).
3. Petitioner's household consisted of herself, her husband and their three children.
4. Petitioner's husband had unearned income in the form of Retirement, Survivors and Disability Insurance (RSDI) in the gross monthly amount of \$ [REDACTED] (Exhibit C).

Petitioner's child had unearned income in the form of RSDI benefits in the gross monthly amount of \$[REDACTED] (Exhibit D).

5. On January 29, 2019, the Department sent Petitioner a Notice of Case Action (NOCA) informing her that she was approved for FAP benefits in the amount of \$[REDACTED] per month, effective January 1, 2019, ongoing (Exhibit B).
6. On February 15, 2019, the Department sent Petitioner a NOCA informing her that her FAP benefit case was closing, effective March 1, 2019, ongoing (Exhibit F).
7. 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 completed a redetermination related to her FAP benefit case in December 2018. On January 29, 2019, the Department sent Petitioner a NOCA informing her that she was approved for FAP benefits in the monthly amount of \$[REDACTED]. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit E).

FAP budget calculations require the consideration of the group size. The Department will determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. BEM 212 (January 2017), p. 1. According to the budget provided, Petitioner's FAP group was determined to be a group size of 5. The Department testified that was an error. The Department highlighted that in the redetermination submitted in December 2018, Petitioner indicated that two of her children were full-time students at [REDACTED]. The Department stated that the two children at [REDACTED] should have been ineligible group members due to their student status.

A person is in student status if he/she is: age 18 through 49 and enrolled half-time or more in a vocational, trade, business, or technical school that normally requires a high

school diploma or an equivalency certificate, or a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245 (April 2017), pp. 3-4. A person in student status must meet certain criteria in order to be eligible for assistance. BEM 245, p. 4.

Petitioner's two adult children were in student status and did not meet any of the criteria set forth in BEM 245 to be eligible for benefits. Therefore, Petitioner's two adult children should not have been included in the FAP group. However, the Department's error of including the two children in the FAP group was in Petitioner's favor. Therefore, the error is harmless.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (January 2016), pp. 1-5. According to the budget provided, the Department determined Petitioner's sole household income was \$[REDACTED] in unearned income. The Department presented Petitioner's husband's and Petitioner's daughter's State Online Query (SOLQ) showing Petitioner's husband received a gross monthly RSDI benefit amount of \$[REDACTED] (Exhibit C), and her daughter received a gross monthly RSDI benefit amount of \$[REDACTED] (Exhibit E). Therefore, the Department properly calculated Petitioner's unearned income amount of \$[REDACTED]

The deductions to income on the net income budget were also reviewed. There was evidence presented that the Petitioner's group includes a senior/disabled/veteran (SDV). BEM 550. Thus, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical deduction.

BEM 554; BEM 556 (August 2017), p. 1; BEM 556 (April 2018), p. 3.

Petitioner's FAP benefit group size of five justifies a standard deduction of \$198. RFT 255 (October 2018), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. Therefore, the budget properly excluded any deduction for dependent care or child support expenses.

As Petitioner's husband qualifies as an SDV member, the group is entitled to deductions for verifiable medical expenses that the SDV member incurs in excess of \$35. BEM 554, p. 1. The Department provided Petitioner with a \$[REDACTED] medical expense deduction for Petitioner's husband's Medicare Part B expense.

In calculating the excess shelter deduction of \$[REDACTED] the Department stated that it considered Petitioner's verified housing expense of \$[REDACTED] and that she was

responsible for a monthly heating expense, entitling her to the heat/utility standard of \$■■■■ BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount, they added the total shelter amount and subtracted 50% of the adjusted gross income. Petitioner's excess shelter deduction was properly calculated at \$■■■■ per month.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$■■■■ Petitioner's adjusted gross income subtracted by the \$■■■■ excess shelter deduction results in a net income of \$■■■■ A chart listed in RFT 260 is used to determine the proper FAP benefit issuance based on the net income and group size. Based on Petitioner's net income and group size, Petitioner's FAP benefit issuance is \$■■■■ Therefore, the Department properly calculated Petitioner's FAP benefit amount.

The Department testified that the error regarding Petitioner's group size was discovered, and her FAP benefit eligibility was redetermined based on a group size of 3. The Department testified that based on a group size of 3, Petitioner exceeded the net income limit set forth by policy. As a result, the Department sent Petitioner a NOCA on February 15, 2019, informing Petitioner that her FAP benefit case was closing, effective March 1, 2019, ongoing.

A non-categorically eligible SDV FAP group must have income below the net income limits. BEM 550 (January 2017), p. 1. Net income limitations are based on group size and are set forth in RFT 250. The Department presented a net income budget to establish Petitioner's group exceeded the net income limit (Exhibit G). As stated above, the Department correctly determined that Petitioner's two children in student status were not eligible for FAP benefits. As such, the Department properly followed policy when it redetermined Petitioner's FAP eligibility based on a group size of 3.

All countable earned and unearned income available to the client must be considered in determining a client's eligibility for program benefits and group composition policies specify whose income is countable. BEM 500 (January 2016), pp. 1-5. As stated above, the Department determined that Petitioner had a total unearned income amount of \$■■■■ The child that had the RSDI income was not one of the children in student status. The child with RSDI income was a minor child that was still included in Petitioner's FAP group. Therefore, the Department properly followed policy when it continued to include that child's RSDI benefit income amount in the FAP budget. Thus, the Department acted in accordance with policy when it determined Petitioner's unearned income amount was \$■■■■

The deductions to income on the net income budget were also reviewed. There was evidence presented that the Petitioner's group includes a senior/disabled/veteran (SDV). BEM 550. Thus, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical deduction.

BEM 554; BEM 556 (August 2017), p. 1; BEM 556 (April 2018), p. 3.

Petitioner's FAP benefit group size of 3 justifies a standard deduction of \$158. RFT 255 (October 2018), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses. Therefore, the budget properly excluded any deduction for dependent care or child support expenses.

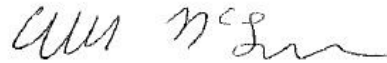
As Petitioner's husband qualifies as an SDV member, the group is entitled to deductions for verifiable medical expenses that the SDV member incurs in excess of \$35. BEM 554, p. 1. The Department provided Petitioner with a \$█ medical expense deduction for Petitioner's husband's Medicare Part B expense.

In calculating the excess shelter deduction of \$█ the Department stated that it considered Petitioner's verified housing expense of \$█ and that she was responsible for a monthly heating expense, entitling her to the heat/utility standard of \$█ BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount, they added the total shelter amount and subtracted 50% of the adjusted gross income. Petitioner's excess shelter deduction was properly calculated at \$█ per month.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$█ Petitioner's adjusted gross income subtracted by the \$█ excess shelter deduction results in a net income of \$█ The net income limit for a group of three is \$█ RFT 250 (October 2018), p. 1. Therefore, the Department acted in accordance with policy when it closed Petitioner's FAP benefits for exceeding the net income limits.

**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 acted in accordance with policy when it determined Petitioner's FAP eligibility. Accordingly, the Department's decision is **AFFIRMED**.



EM/jaf

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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 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**

Linda Gooden  
MDHHS-Oakland-6303-Hearings

**Petitioner**

[REDACTED]  
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BSC4  
M Holden  
D Sweeney