



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: July 11, 2019  
MOAHR Docket No.: 19-006091  
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 July 9, 2019, from Detroit, Michigan. Petitioner was represented by his Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by Lashana Threlkeld, Assistance Payments Supervisor and Briona Taylor, Assistance Payments Worker.

**ISSUE**

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

**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 April 25, 2019, a Front End Eligibility (FEE) investigation was completed related to Petitioner's rental income (Exhibit A, pp. 3-4).
3. On May 15, 2019, the Department sent Petitioner a Notice of Case Action informing him that he was eligible for FAP benefits in the monthly amount of \$[REDACTED] effective May 1, 2019, ongoing (Exhibit A, pp. 16-19). The Department presented Petitioner's Benefit Summary Inquiry which shows Petitioner's FAP benefits were not reduced to \$[REDACTED] until June 2019 (Exhibit A, p. 26).

4. On [REDACTED], 2019, Petitioner submitted a request for hearing disputing the Department's actions related to his FAP and Medical Assistance (MA) benefit cases.

### **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).

#### **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.

In this case, the Department conducted a FEE investigation and discovered Petitioner had rental income that was not included in his FAP budget. The Department had received a "Rental Downpayment Agreement Form" from an individual renting a property owned by Petitioner. The agreement states that the tenant agreed to pay a deposit of \$1,000 to Petitioner. As a result, the Department included additional income in Petitioner's FAP budget and determined he was entitled to \$[REDACTED] per month in FAP benefits. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, pp. 12-13). Petitioner's AHR disputed the Department's calculation of Petitioner's rental income.

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 (July 2017), pp. 1-5. Rental income is money an individual (landlord) receives for allowing another individual (renter) to use the landlord's property. BEM 504 (July 2014), p. 1. Some types of rental/room and board income are counted as unearned income and some as earned income or self-employment. BEM 504, p. 1. In-home rental is when a landlord rents out part of his own dwelling to another individual. BEM 504, p. 1. Farmland rental means renting land to someone for the purpose of producing farm products. BEM 504, p. 1. Room and board is money an individual receives for providing another individual with both food and a place to live. BEM 504, p. 2. Other rental income means any rental income that is not farmland rental, in-home rental or room and board. BEM 504, p. 2. The Department considers rental income of a property that is managed under 20 hours per week as unearned income and earned income for a property that is managed over 20 hours per week. BEM 504, p. 2. The Department counts the gross rent payment minus expenses as earning income from self-employment. BEM 504, p. 2. The Department will allow the

higher of the following as expenses: (i) 60% of the rental payment or (ii) actual rental expenses if the landlord chooses to claim and verify the expenses. BEM 504, p. 2.

According to the budget provided, the Department included \$1,747 of unearned income in Petitioner's FAP budget. The Department testified that Petitioner had \$747 in unearned income in the form of Social Security benefits. The remaining \$1,000 was the rental income. The Department used the figure of \$1,000, as that was what was stated in the agreement signed by Petitioner and the lessee.

Petitioner's AHR testified that the rent was not \$1,000 per month, but \$500 per month. The \$1,000 deposit was for the security deposit and the first month's rent. Petitioner's AHR stated that Petitioner jointly owns the property with his wife, with whom he is separated. Petitioner's AHR testified that the mortgage is in Petitioner's name. Petitioner's wife had formerly lived at the property but became ill and was unable to live at the home. Petitioner and Petitioner's AHR began managing the property and started to lease the premises to pay the mortgage. Petitioner's AHR testified that she collects the rent and pays the mortgage for Petitioner. Petitioner testified that he spends more than 20 hours per week managing the property.

The Department committed multiple errors when determining Petitioner's rental income. The Department included \$1,000 as the gross rental amount. The agreement signed by the lessee clearly states that the \$1,000 is a deposit, not the monthly rental amount. Therefore, the gross rent should be \$500. The Department also designated the income as unearned income. Petitioner stated he manages the property more than 20 hours per week. Therefore, the income should be designated as earned income. Additionally, the Department did not deduct any expenses. Therefore, the Department did not properly calculate Petitioner's rental income. As it follows, the Department did not properly determine Petitioner's FAP benefit amount.

## **MA**

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, Petitioner submitted a request for hearing disputing the Department's actions related to his MA benefit case. The Department presented a Health Care Coverage Determination Notice sent to Petitioner on June 10, 2019, informing him that he was approved for full-coverage MA benefits effective June 1, 2019, and full-coverage MSP benefits effective June 1, 2019 (Exhibit A, pp. 34-36). The Department also submitted Petitioner's eligibility summary showing that he was active for MA and MSP

benefits as reflected in the notice (Exhibit A, pp. 28-29). Petitioner did not have a lapse in coverage for either benefit program.

policy states that the Michigan Office of Administrative Hearings and Rules may grant a hearing about any of the following: (i) denial of an application and/or supplemental payments; (ii) reduction in the amount of program benefits or service; (iii) suspension or termination of program benefits or service; (iv) restrictions under which benefits or services are provided; (v) delay of any action beyond standards of promptness; or (vi) for FAP only, the current level of benefits or denial of expedited service. BAM 600, p. 5. As none of the previous conditions apply to Petitioner's case, it is found there was no negative action taken related to Petitioner's MA benefit case and there is no justiciable issue. As such, the hearing request, therefore, **DISMISSED** for lack of jurisdiction.

### **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 benefit amount.

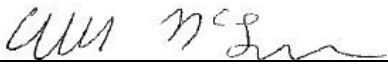
Accordingly, the Department's decision is **REVERSED**.

Petitioner's request for hearing related to his MA benefit case is **DISMISSED**.

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 benefit eligibility as of June 1, 2019;
2. If Petitioner is eligible for additional FAP benefits, issue supplements he is entitled to receive; and
3. Notify Petitioner of its decision in writing.

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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-Oakland-4-Hearings  
M. Holden  
D. Sweeney  
BSC4- Hearing Decisions  
MOAHR

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

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