



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: July 18, 2019  
MOAHR Docket No.: 19-006285  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

**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 17, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by ██████████, Hearings Facilitator, and ██████████, Eligibility Specialist.

**ISSUE**

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit rate?

**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 February 2019, Petitioner was receiving \$██████████ in FAP benefits per month.
3. In February 2019, Petitioner completed the Redetermination process.
4. Effective March 2019, Petitioner began receiving ██████████ in FAP benefits per month after Petitioner's wife's income was budgeted.

5. On May 22, 2019, Petitioner reported changes in his wife's employment income.
6. On June 4, 2019, the Department completed the processing of Petitioner's reported changes and issued a Notice of Case Action to Petitioner informing him that his FAP benefit rate would increase to [REDACTED] effective July 2019.
7. On June 7, 2019, the Department received Petitioner's request for hearing disputing the calculation of his FAP benefit rate as well as the date of implementation for the increase in his benefits.

### **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 disputes the Department's calculation of FAP benefits after he reported a change in his wife's income as well as the implementation date of the reported change.

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. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2017), p. 1. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9.

The Department testified and Petitioner agreed that he receives a Supplemental Security Income (SSI) benefit of [REDACTED] per month. Since his income is received on a monthly basis, no further calculation is required to standardize it. In reviewing the FAP

benefit calculations from the Department, the Department actually budgeted [REDACTED] for his SSI benefit. On February 13, 2019, the Department noted in case comments that Petitioner's SSI benefit was [REDACTED]. Neither party provided any SSI statements or other reliable source to identify Petitioner's SSI benefit rate. Since the [REDACTED] is more favorable to Petitioner and that was the number agreed upon by the parties in the hearing, Petitioner's SSI benefit rate will be budgeted as [REDACTED] for purposes of this decision.

In addition to the SSI income for Petitioner, Petitioner's wife also has employment income. On May 22, 2019, Petitioner reported a reduction in his wife's income and provided the necessary pay stubs. Her income was as follows:

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

After averaging and then standardizing her income, the amount budgeted for FAP purposes is \$[REDACTED] (dropping the cents) which the Department properly budgeted. Therefore, total household income is [REDACTED]

After consideration of income, the Department considers all appropriate deductions and expenses. There was evidence presented that the Petitioner is a Senior, Disabled, or Disabled Veteran. BEM 550. Thus, the group is eligible for the following deductions to income:

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

BEM 554 (April 2019), p. 1; BEM 556 (April 2018), p. 3.

Since Petitioner's wife has employment income, she is eligible for the 20% earned income deduction totaling [REDACTED]. The Department then budgeted \$0.00 for the child support and dependent care expenses. Petitioner did not dispute that he does not have these expenses. The Department also budgeted the standard deduction of [REDACTED] for a group size of seven in accordance with Department policy. RFT 255 (August 2018), p. 1. Next, the Department budgeted a medical expense deduction of [REDACTED] per month. The Department noted on the record that this expense was old and needed to be removed, but since it was considered by the Department in its calculations and no evidence was presented by either party identifying the expense, it will continue to be

considered for purposes of this decision. After consideration of these deductions, the Adjusted Gross Income (AGI) is calculated. Petitioner's AGI is [REDACTED].

Once the AGI is calculated, the Department must then consider the Excess Shelter Deduction. The Department budgeted and Petitioner did not dispute that he has a rental expense of [REDACTED]. In addition to the rental expense, the Department afforded Petitioner the Heat and Utility (H/U) standard of [REDACTED]. BEM 554, pp. 14-15; RFT 25, p. 1. Once the rental expense and H/U standard are added together, 50% of Petitioner's AGI is subtracted to achieve Petitioner's Excess Shelter Deduction. Petitioner's Excess Shelter Deduction is [REDACTED] BEM 556, p. 5.

Next, the Excess Shelter Deduction is subtracted from Petitioner's AGI to achieve his Net Income. *Id.* Petitioner's Net Income is \$[REDACTED]. Finally, the Net Income amount is compared against the FAP Issuance Table to determine Petitioner's benefit rate of \$[REDACTED]. RFT 260 (October 2018), pp. 22. The Department afforded Petitioner a FAP benefit rate of [REDACTED]. The discrepancy in the FAP benefit rate calculated here versus the FAP benefit rate calculated by the Department results from the discrepancy related to Petitioner's SSI income. Therefore, the Department has not met its burden of proof that it properly calculated Petitioner's FAP benefit rate.

Petitioner also had concerns related to the date of implementation of Petitioner's reported changes. He reported the reduction in hours and wages for his wife on May 22, 2019. Policy provides that the Department is required to take action on reported changes within ten days of being notified. BAM 220 (April 2019), p. 7. If a change will result in an increase in FAP benefits, the changes must be effective no later than the first allotment issued ten days after the date that the change was reported. *Id.* Ten days after Petitioner reported his changes is June 1, 2019. Therefore, the first allotment after June 1, 2019 happens in July 2019. The Department correctly determined that any increase in FAP benefits would be effective July 1, 2019.

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 calculated Petitioner's FAP benefit rate.

### **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. Redetermine Petitioner's FAP benefit effective July 1, 2019;
2. If otherwise eligible, issue supplements for any benefits not previously received; and,
3. Notify Petitioner in writing of its decision.



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**Amanda M. T. Marler**  
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

**DHHS**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**cc:**

[REDACTED]  
[REDACTED]