



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: September 4, 2019, 2019  
MOAHR Docket No.: 19-008095  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 August 28, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) did not appear for a hearing despite a reminder email being sent to the Department regarding a three-way hearing for Petitioner.

### **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. On March 29, 2019, Petitioner submitted 45 pages of verifications to the Department via fax which included an updated mortgage statement, medical expenses, trash, lawncare, and other items.
2. On April 2, 2019, the Department received a completed Redetermination from Petitioner.
3. On the same day, the Department issued a Notice of Case Action to Petitioner informing her that her FAP benefit rate had increased to [REDACTED] per month effective May 1, 2019 for a group size of one based upon [REDACTED] in unearned

income, a [REDACTED] standard deduction, housing costs of [REDACTED], and the heat and utility (H/U) standard deduction of [REDACTED].

4. Sometime between April 2<sup>nd</sup> and July 2<sup>nd</sup>, the Department realized that Petitioner was not responsible for the full cost of her mortgage and housing expense, but instead that the Michigan State Housing Development Authority was paying [REDACTED] per month towards her mortgage and [REDACTED] per month as a utility assistance payment.
5. On July 2, 2019, the Department issued a Notice of Case Action to Petitioner informing her that her FAP benefit rate would decrease to [REDACTED] per month effective August 1, 2019 for a group size of one based upon [REDACTED] in unearned income, a [REDACTED] standard deduction, [REDACTED] in housing costs, and the [REDACTED] H/U.
6. On July 23, 2019, the Department received a request for hearing from Petitioner disputing the Department's reduction in her FAP benefit rate.

### **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 recalculation and reduction of her FAP benefit rate as of August 1, 2019. The Department did not appear at the hearing to defend or present the reasoning behind its actions.

Petitioner's first area of concern related to the recalculation of her benefits was attributable to her housing cost. Petitioner noted that in the hearing packet presented by the Department and its hearing summary, the Department relied upon Petitioner's mortgage costs from February 2017. However, Petitioner credibly testified that she provided an updated Mortgage Statement in March 2019 and attempted to explain to the Department her need to make escrow payments, as well as condominium maintenance fees. Since the Department did not appear to present its case, it is unclear why the Department would rely upon a verification that is more than two years

old in making its calculation of Petitioner's FAP benefits. When considering housing expenses, the Department should consider any payment or expense that is necessary to prevent eviction or foreclosure, and that has not been allowed in a previous FAP budget. BEM 554 (April 2019), p. 13. Housing expenses typically include things such as rent, mortgage, second mortgage, home equity loans, required condo or maintenance fees, lot rent, or other payments including interest that lead to the ownership of the shelter occupied by the FAP group. *Id.* Other items which may be considered include property taxes, state and local assessments, and insurance for the structure. BEM 554, p. 14. Finally, expenses from home repairs substantially damaged or destroyed by natural disasters such as fires and floods are also considered housing costs. *Id.*

Petitioner's next concern was the calculation of her unearned income. Petitioner credibly testified and the Department's consolidated income inquiry agreed that Petitioner is a Supplemental Security Income (SSI) recipient. As a result, Petitioner receives ██████ per month in SSI benefits and ██████ quarterly for State SSI Payment (SSP). However, the Department calculated Petitioner's monthly unearned income as ██████. When Petitioner's quarterly SSP payment is divided by three and added to her SSI benefit, her monthly income is ██████. The Department did not appear at the hearing to explain this discrepancy; therefore, it has not met its burden of proof.

Next, Petitioner was concerned about the Department's failure to consider submitted medical expenses. Petitioner credibly testified that she submitted ██████ in medical expenses on March 29, 2019 as part of her 45 pages of verifications. The Department failed to consider any of her medical expenses. Petitioner is age █ and is disabled; therefore, she is eligible for medical deductions. BEM 554, p. 1. Again the Department did not appear to explain why there were no medical expenses considered in Petitioner's FAP budget; therefore, the Department has not met its burden of proof.

Finally, Petitioner was concerned that she did not receive a deduction for trash and lawncare expenses. FAP groups may receive a deduction from their income in the FAP budget for the following items:

- Dependent care expense
- Excess shelter expenses
- Court ordered child support and arrears paid to nonhousehold members
- The standard deduction
- An earned income deduction for households with earned income
- Medical expenses for groups with a Senior, Disabled Person, or Disabled Veteran (SDV)

*Id.* The Excess Shelter expense is a calculation of several expenses as compared to Adjusted Gross Income (AGI). It includes consideration of housing expenses, heat, electric, water, sewer, gas, trash, and telephone expenses. If an individual is eligible for the Heat and Utility Standard Deduction (H/U), then the individual is not eligible for any

other utility related housing costs. BEM 554, p. 15. Since the Department provided Petitioner the full H/U, she is not eligible for the trash deduction or any other utility related deduction. The Department correctly assessed this element of the FAP budget.

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 recalculated Petitioner's FAP benefit rate as of August 1, 2019.

### **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. Recalculate Petitioner's FAP benefit rate as of August 1, 2019;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AM/tm



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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]