



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 10, 2019  
MOAHR Docket No.: 19-008610  
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 September 5, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearings Facilitator, and [REDACTED], 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. On June 24, 2019, the Department received Petitioner's completed Redetermination listing Petitioner's Social Security Administration (SSA) benefit and his employment income, as well as his child support expense,
2. On July 30, 2019, the Department received two paystubs from Petitioner for paydates June 13, 2019 in the amount of [REDACTED] and July 11, 2019 in the amount of [REDACTED]; the paystubs show that Petitioner is paid on bi-weekly basis.
3. On July 2, 2019, the Department completed a review of the State Online Query (SOLQ), an interface with the Social Security Administration accessible by the Department to aid it in determining a client's Social Security Benefit and Medicare

participation, which showed that Petitioner was receiving a Retirement Survivors Disability Insurance (RSDI) benefit of [REDACTED] effective May 1, 2019, and that he was responsible for his Medicare Part B premium in the amount of [REDACTED] effective the same day.

4. On July 31, 2019, the Department issued a Notice of Case Action to Petitioner informing him that he was eligible for [REDACTED] per month in FAP benefits effective August 1, 2019 for a group size of one based upon [REDACTED] in earned income, [REDACTED] in unearned income, a [REDACTED] standard deduction, [REDACTED] in medical expenses, [REDACTED] in child support expenses, [REDACTED] in rental expenses, and a \$[REDACTED] heat and utility standard deduction (H/U).
5. On August 5, 2019, the Department received Petitioner's request for hearing disputing the Department's calculation of his FAP benefit rate and its failure to consider his Medicare Part B premium.

### **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 his FAP benefit rate. At the hearing, the Department conceded multiple errors in the calculation of Petitioner's FAP benefit rate. A thorough review of the calculations follows below.

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. Income that is received on a weekly basis is averaged and multiplied by 4.3. BEM 505, pp. 8-9. Income that is received on a bi-weekly basis is averaged and multiplied by 2.15. *Id.* Finally, income that is received twice per month is added together. *Id.*

In this case, Petitioner agrees that he receives an RSDI payment in the amount of \$867.50 per month. The Department concedes that it improperly budgeted Petitioner's RSDI benefit as ██████ per month. It is noted that this error benefits Petitioner because it results in a lower total gross income. In addition to his RSDI benefit, Petitioner also has income from employment. Petitioner provided two paystubs to the Department, but the paystubs were not from consecutive pay dates. Therefore, the Department had to calculate the value of the missing paystub based upon the two paystubs provided. For pay date June 13, 2019, Petitioner was paid ██████ for a year-to-date income of ██████. For pay date July 11, 2019, Petitioner was paid ██████ for a year-to-date income of ██████. In order to calculate the value of the missing paystub, the year-to-date income from the June 13, 2019 paystub as well as the value of the wages from the July 11, 2019 paystub must be subtracted from the July 11, 2019 year-to-date income. Therefore, Petitioner's wages from June 27, 2019 was ██████. Since Petitioner is paid on a biweekly basis and the Department is required to review the last 30-days of wages, the three paychecks are averaged together and multiplied by 2.15 for a standardized income of ██████. BEM 505, p. 6. The Department calculated Petitioner's earned income as ██████ per month but the evidence does not support this calculation. Again, because the Department's income calculation results in an overall lower gross income for Petitioner, there is a benefit to Petitioner.

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, he is eligible for the following deductions to income:

- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical deduction for medical expenses greater than \$35.00.
- Dependent care expense.

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

On Petitioner's Redetermination, he listed his monthly child support obligation as ██████ per month. The Department budgeted ██████ per month on the recalculated budget and had it listed as ██████ on the budget prior to recalculation. Petitioner made the following payments for child support: April 2019 ██████, May 2019 ██████, and June 2019 ██████. The Department is required to budget the amount of court-ordered child support and arrears paid to non-household members in the benefit month, court-ordered third party payments on behalf of non-household members, and legally obligated child

support paid to an individual or agency outside the household, for a child who is now a household member, provided the payments are not returned to the household. BEM 554, p. 6. The evidence presented was unclear as to the value of Petitioner's court-ordered child support payment and whether or not Petitioner had an arrearage. However, if Petitioner is not making payments equal to the value of the court ordered amount, he is not entitled to the full deduction. BEM 554, p. 7. There is insufficient evidence regarding Petitioner's child support circumstances to determine whether the Department properly budgeted his child support expense.

The Department also provided Petitioner with a [REDACTED] medical expense deduction for Freedom-To-Work Medical Assistance (MA) Program premiums. However, no evidence was presented on the total value of the premium. If Petitioner is responsible for a [REDACTED] premium, then this amount may be correct, if it is more or less, than this amount, it is incorrect. Regardless, the Department failed to consider Petitioner's obligation to pay his Medicare Part B premium despite being aware of the obligation via the SOLQ as well as his removal from the Medicare Savings Program (MSP) effective May 1, 2019. Therefore, the Department did not properly budget Petitioner's medical expense deduction.

Petitioner agrees that he is not responsible for a dependent care expense. In addition, the Department properly budgeted the [REDACTED] Standard Deduction pursuant to policy based upon a group size of one. BEM 556, p. 4; RFT 255 (October 2018), p.1. After consideration of each of these expenses, Petitioner's Adjusted Gross Income (AGI) is calculated. Since the Department erred in calculating Petitioner's income, medical expenses, and potentially child support expense, the AGI is not calculated here, but the review of the remainder of Petitioner's FAP budget is considered below.

Once the AGI is calculated, the Department must then consider the Excess Shelter Deduction. BEM 556, pp. 4-6. Petitioner agrees that he has a rental obligation of \$650.00 per month and that he is responsible for the gas and electric expenses for his household. Therefore, the Department properly budgeted the [REDACTED] housing expense and the \$[REDACTED] heat and utility standard deduction (H/U) to achieve the total housing cost. RFT 255 (October 2018), p. 1. Once the total housing cost is calculated, it is reduced by 50% of Petitioner's AGI to achieve his excess shelter cost. If the calculation results in a positive number, this number is deducted from Petitioner's AGI to achieve his net income. BEM 556, pp. 4-6. The net income is then compared against the Benefit Issuance Tables to determine Petitioner's FAP benefit rate. RFT 260 (October 2018). Since there are errors in the calculation of Petitioner's income and expenses, Petitioner's actual FAP benefit rate is not calculated here.

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 calculated Petitioner's FAP benefit rate effective 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 effective August 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]  
[REDACTED]