



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]  
[REDACTED]

Date Mailed: January 21, 2020  
MOAHR Docket No.: 19-013114  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: John Markey**

### **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 January 13, 2020 from Detroit, Michigan. Petitioner appeared and represented herself. Also appearing on behalf of Petitioner were her parents, [REDACTED] [REDACTED]. The Department of Health and Human Services (Department) was represented by April Nemec, Hearings Facilitator. During the hearing, an 85-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-85.

Petitioner requested the hearing to challenge the Department's actions with respect to Petitioner's Food Assistance Program (FAP) and Medicaid (MA) benefits. Prior to the hearing, the Department and Petitioner resolved the dispute with respect to Petitioner's MA benefits by approving Petitioner for the Disabled Adult Child program. Because the issue had been resolved, Petitioner requested to withdraw the hearing request as it related to MA. The Department did not object. There being good cause to approve the request to withdraw, Petitioner's hearing request with respect to her MA benefits is hereby dismissed.

### **ISSUE**

Did the Department properly determine Petitioner's FAP benefits, effective October 1, 2019?

### **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 recipient of FAP benefits from the Department.

2. On September 19, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that she was eligible for \$16 per month in FAP benefits, effective October 1, 2019. The document included a budget summary that detailed all of the inputs the Department used in the calculation. It showed that the Department applied the non-heat electric standard of \$126 and did not apply the more favorable heat/utility (h/u) standard. Exhibit A, pp. 65-66.
3. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to 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 objected to the Department's determination of her monthly FAP benefits, effective October 1, 2019. In calculating Petitioner's FAP benefits, the Department used information it received from Petitioner concerning her income and shelter expenses. Petitioner's monthly income was \$1,230, all unearned. Her shelter expenses included \$299 in housing expenses and her monthly electric bill.

During the hearing, the Department witness testified that Petitioner was found to be not eligible for the h/u standard because Petitioner's verified expenses do not include any responsibility to pay for heating costs. Thus, the Department only applied the electric standard of \$126 in Petitioner's shelter expenses instead of the \$518 for the h/u standard. While it is true that there is no evidence that Petitioner is responsible for heating costs, that does not preclude Petitioner from having the h/u standard applied to her case.

The h/u standard covers all heating and utility costs, including cooling. BEM 554 (April 2019), p. 15. FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if they verify they have the responsibility to pay for non-heat electric. BEM 554, p. 16. Petitioner credibly testified that she paid for cooling and was responsible for non-heat electric and provided all the information she was asked for on the verification forms. Thus, Petitioner should have had the h/u standard applied to the equation. The Department's failure to factor the h/u standard into the equation in

determining Petitioner's FAP benefits resulted in a faulty decision. Thus, the Department must redetermine Petitioner's FAP benefits from October 1, 2019, ongoing.

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 eligibility for FAP benefits, effective October 1, 2019.

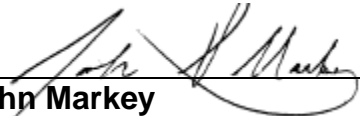
### **DECISION AND ORDER**

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. Redetermine Petitioner's eligibility for FAP benefits from October 1, 2019, ongoing, ensuring that all allowable expenses are applied, including the h/u standard for which Petitioner qualifies;
2. If Petitioner is found to be eligible for additional benefits, promptly issue to Petitioner a supplement; and
3. Notify Petitioner in writing of its decisions.

JM/tlf

  
\_\_\_\_\_  
**John Markey**  
Administrative Law Judge  
for Robert Gordon, Director  
Department of Health and Human Services

