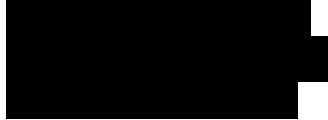




GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR



Date Mailed: February 20, 2020  
MOAHR Docket No.: 20-000540  
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 February 18, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Ursula Barrett-Weatherly, Family Independence Manager.

### **ISSUE**

Did the Department properly process Petitioner's reported changes related to her Food Assistance Program (FAP) benefit case?

### **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 December 6, 2019, Petitioner reported that she had lost her employment.
3. On January 14, 2020, Petitioner submitted a request for hearing alleging that the Department failed to process her reported change.
4. On January 15, 2019, the Department sent Petitioner a Notice of Case Action informing her that she was receiving a FAP supplement in the amount of \$507, making her FAP benefit total for January 2020 \$552 (Exhibit A, pp. 15-17).

## **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 was an ongoing FAP recipient. On December 6, 2019, Petitioner reported that she had lost one of her two sources of income on December 5, 2019. Petitioner advised the Department that she was no longer working with the employer, [REDACTED]. Petitioner submitted a request for hearing alleging that the Department had failed to process her reported change. Subsequent to the request for hearing, the Department updated the income, and provided Petitioner with a supplement for January 2020. At the hearing, Petitioner argued that the Department erred in processing the change, in that she was entitled to increased FAP benefits for December 2019.

The Department must act on a change reported by means other than tape match within 10 days of becoming aware of the change. BAM 220 (April 2017), p. 7. Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. BAM 220, p. 7.

Petitioner testified that she reported the change in income on December 6, 2019. However, Petitioner was unsure as to when she submitted verification of the change. The Department testified that Petitioner did not submit verification of the loss of employment. The Department stated that the Work Number report was utilized to verify the loss of employment (Exhibit A, pp. 10-11).

Petitioner receives her FAP benefits on the 19<sup>th</sup> of each month. It is uncertain as to when, or if, verification was provided by Petitioner of the loss of employment. Therefore, the Department acted in accordance with policy when it implemented the change in income effective January 1, 2020.

Petitioner also argued that the Department did not properly calculate her FAP benefit supplement amount for January 2020. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount for January 2020 (Exhibit A, pp. 5-6).

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), pp. 1-2. 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. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. BEM 505, pp. 7-9. Income received weekly is multiplied by a 4.3 multiplier. BEM 505, pp. 7-9. Income received twice per month is added together. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (October 2019), pp. 6-7.

Per the budget provided, the Department included \$ [REDACTED] in earned income in Petitioner's FAP budget. The Department presented a Work Number report showing Petitioner's wages from her second employer, [REDACTED]. Petitioner was paid on December 9, 2019, in the gross amount of \$ [REDACTED] and on December 23, 2019, in the gross amount of \$ [REDACTED]. Petitioner was paid twice per month. When adding the amounts together, it results in a standard monthly income of \$1,766.03. It is unclear as to how the Department obtained the \$ [REDACTED] figure. Therefore, the Department failed to establish that it properly calculated Petitioner's earned income for January 2020. As it follows, the Department failed to establish that it properly determined Petitioner's FAP benefit supplement amount for January 2020.

### **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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's FAP benefit amount for January 2020.

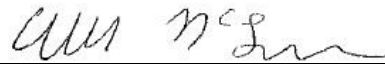
Accordingly, the Department's decision is **REVERSED**.

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 amount for January 2020;

2. If Petitioner is eligible for additional FAP benefits, issue supplements she 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-Wayne-18-Hearings  
M. Holden  
D. Sweeney  
BSC4- Hearing Decisions  
MOAHR

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

