



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: March 10, 2020  
MOAHR Docket No.: 20-001073  
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 March 9, 2020 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Melissa Stanley, Hearings Facilitator. During the hearing, a 21-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-21.

### **ISSUE**

Did the Department properly determine Petitioner's eligibility for Food Assistance Program (FAP) benefits, effective January 1, 2020?

### **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. Petitioner's household consists of Petitioner and her four minor children.
2. On November 4, 2019, the Department issued to Petitioner a Redetermination form to gather relevant information regarding Petitioner's ongoing eligibility for FAP benefits. Petitioner was instructed to complete the form and return it to the Department by December 2, 2019. Exhibit A, pp. 14-21.
3. On December 2, 2019, the Department received the completed Redetermination form from Petitioner. On the form, Petitioner reported that her household's only

income was the child support she receives from the fathers of her four children. Exhibit A, pp. 14-21.

4. According to the documentation showing Petitioner's receipt of child support, she received on average \$925.25 per month in child support for the three full months prior to December 2019. However, that includes onetime extraordinary payments, including an \$800.55 payment received in November 2019. That was the only payment for that particular child during the three-month period and was not even close to regular. Exhibit A, pp. 7-10.
5. On December 27, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that she was eligible for \$440 per month in FAP benefits, effective January 1, 2020. The Department budgeted \$1,294 per month in unearned income. Exhibit A, pp. 5-6.
6. On [REDACTED], 2020, Petitioner submitted to the Department a request for hearing objecting to the Department's determination of her eligibility for FAP benefits, effective January 1, 2020.

### **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 submitted a request for hearing objecting to the Department's determination of her FAP eligibility, effective January 1, 2020. In determining Petitioner's monthly allotment, the Department budgeted \$1,294 in unearned income, all from child support. Petitioner's position was that the Department budgeted far too much child support income, causing her benefits to be greatly reduced from what she had been receiving. After reviewing the record, it is abundantly clear that the Department overstated Petitioner's income.

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 child support income, the Department is required to use income from the past three months 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. 4-5.

The documentation showing Petitioner's receipt of child support payments shows that Petitioner received, on average, \$925.25 per month in the three-month period prior to the Redetermination. As the Department budgeted \$1,294 per month, it already is clear that the Department inflated Petitioner's income. That conclusion becomes even more clear when one reviews the payments made during that time and discovers that a number of the payments were extraordinary, one-time payments, including an \$800.55 payment received in November 2019.

Petitioner is supposed to receive a total of \$578 per month in child support each month. When one removes the obvious one-time extraordinary payment she received during the review period, she received approximately a maximum of \$658.40 per month during the review period. Upon further examination, that number may be reduced even further. The Department budgeted \$1,294 per month. Clearly, the Department erred. That error caused Petitioner's income to be incorrectly overstated, thereby reducing her eligibility for FAP benefits.

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 January 1, 2020.

### **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, effective January 1, 2020;
2. When determining Petitioner's income, follow Department policy concerning prospecting income and discarding extraordinary payments;
3. If Petitioner is found to be eligible for additional FAP benefits, ensure that a supplement is promptly issued; and

4. Notify Petitioner in writing of its decision.

JM/tm



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**John Markey**  
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**

Kathleen Verdoni  
411 East Genesee  
PO Box 5070  
Saginaw, MI  
48607

**Petitioner**

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

cc: FAP: M. Holden; D. Sweeney  
AP Specialist (2) Saginaw