



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]

Date Mailed: May 28, 2020  
MOAHR Docket No.: 20-001721  
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 May 26, 2020, from Detroit, Michigan. Petitioner was present with her sister, [REDACTED]. The Department of Health and Human Services (Department) was represented by Katrina Littles, Assistance Payments Supervisor.

### **ISSUES**

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefit case?

Did the Department properly determine Petitioner's FAP eligibility?

### **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 [REDACTED], 2020, Petitioner completed a redetermination related to her FAP benefit case (Exhibit A, pp. 31-38).
3. Petitioner's household consisted of herself and her two children.
4. Petitioner had unearned income in the form of Retirement, Survivors and Disability Insurance (RSDI) benefits in the gross monthly amount of \$718; Supplemental

Security Income (SSI) benefits in the gross monthly amount of \$85; and State SSI Payment (SSP) benefits in the gross monthly amount of \$14 (Exhibit A, pp. 23-25).

5. On December 13, 2020, the Department sent Petitioner a Verification Checklist (VCL) requesting verification of her property taxes and her son's income from employment (Exhibit A, pp. 40-41).
6. On January 2, 2020, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefit case was closing effective January 1, 2020, ongoing, for her failure to submit the requested verifications (Exhibit A, pp. 52-53).
7. On [REDACTED], 2020, Petitioner submitted an application for FAP benefits (Exhibit A, pp. 12-19).
8. On February 21, 2020, the Department sent Petitioner a NOCA informing her that her application was approved, and she was entitled to FAP benefits in the monthly amount of \$247 (Exhibit A, pp. 50-51).
9. On February 24, 2020, Petitioner submitted a request for hearing disputing 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 was an ongoing FAP recipient. On [REDACTED], 2019, Petitioner completed a redetermination related to her FAP benefit case. Petitioner reported that one of her children had income from employment. On December 13, 2019, the Department sent Petitioner a VCL requesting verification of her son's income from employment. Proofs were due by December 23, 2019.

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (April 2017), p. 1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. For FAP cases, the Department allows the client 10 calendar days (or other time limit specified in

policy) to provide the verification that is required. BAM 130 (April 2017), p. 7. Verifications are considered to be timely if received by the date they are due. BAM 130, p. 7. For electronically transmitted verifications (fax, email or Mi Bridges document upload), the date of the transmission is the receipt date. BAM 130, p. 7. Verifications that are submitted after the close of regular business hours through the drop box or by delivery of a Department representative are considered to be received the next business day. BAM 130, p. 7. The Department sends a negative action notice when: the client indicates a refusal to provide a verification OR the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130, p. 7.

The Department testified that Petitioner submitted a Verification of Employment form on December 20, 2019, related to her son's employment (Exhibit A, pp. 42-45). However, the form was completed by Petitioner's son, and not the employer as required. Petitioner did not submit proper verification of her son's employment until January 16, 2020 (Exhibit A, pp. 46-49), which was well past the due date of December 23, 2019. As a result, the Department closed Petitioner's FAP benefit case and issued her notice on January 2, 2020.

Petitioner testified that she was not aware that the employer had to complete the Verification of Employment form. Petitioner stated that once she learned that the employer had to complete the information, she submitted proper verification of her son's employment.

The Department sends a negative action when the client indicates a refusal to provide a verification or the time period given has elapsed and the client has not made a reasonable effort to provide it. Petitioner clearly did not indicate a refusal to provide the verification and made a reasonable effort to comply with the requests for verification. Thus, the Department did not act in accordance with policy when it closed Petitioner's FAP benefit case.

Subsequent to the closure of her FAP benefit case, Petitioner submitted an application for FAP benefits on [REDACTED], 2020. The Department determined that Petitioner was entitled to a monthly FAP benefit amount of \$247. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, pp. 26-29).

Petitioner initially included both of her children on the [REDACTED], 2020 FAP application. However, Petitioner later reported that one of her children, who was over the age of 22, does not purchase or prepare food with her and her other child. As a result, the Department removed the child from Petitioner's FAP group.

FAP budget calculations require the consideration of the group size. The Department will determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. BEM 212 (July 2019), p. 1. The FAP group composition is established by determining all of the following: who lives together, the relationship(s) of the people who live together, whether the people living

together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. BEM 212, p. 6. • Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p. 1.

Petitioner reported that one of her children does not purchase or prepare food with the remainder of the household. Additionally, the child is not Petitioner's mandatory group member. Therefore, the Department acted in accordance with policy when it removed Petitioner's child from her group and based her FAP benefit amount on a group size of two.

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. For RSDI, the Department counts the gross benefit amount as unearned income. BEM 503 (January 2020), p. 28. For FAP benefit cases, the Department includes the gross amount of current Social Security Administration (SSA)-issued SSI as unearned income. BEM 503 (January 2020), p. 34. Whenever an SSA-issued independent living or household of another payment is budgeted, the Department will include the monthly SSP payment amount as unearned income. BEM 503, p. 35.

Per the budget provided, the Department included \$817 in unearned income. The Department presented Petitioner's State Online Query (SOLQ) report showing she receives RSDI benefits in the gross monthly amount of \$718 and SSI benefits in the gross monthly amount of \$85. The Department also testified that Petitioner receives SSP benefits in the gross monthly amount of \$14. Petitioner confirmed those figures were correct. Therefore, the Department properly calculated Petitioner's household income.

The deductions to income on the net income budget were also reviewed. There was evidence presented that the Petitioner's group includes a senior/disabled/veteran (SDV). BEM 550. Thus, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical deduction.

BEM 554 (January 2020), p. 1; BEM 556 (January 2020), p. 3.

Petitioner's FAP benefit group size of two justifies a standard deduction of \$161. RFT 255 (October 2018), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care, child support expenses or out-of-pocket medical expenses. Therefore, the budget properly excluded any deduction for dependent care, child support or medical expenses.

In calculating the excess shelter deduction of \$298, the Department stated that it considered Petitioner's verified housing expense of \$108.23 (Exhibit A, p. 22) and that she was responsible for a monthly heating expense, entitling her to the heat/utility standard of \$518. BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount, they added the total shelter amount and subtracted 50% of the adjusted gross income. Petitioner's excess shelter deduction was properly calculated at \$298 per month.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$656. Petitioner's adjusted gross income subtracted by the \$298 excess shelter deduction results in a net income of \$358. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance based on the net income and group size. Based on Petitioner's net income and group size, Petitioner's FAP benefit issuance is \$247. Therefore, the Department properly calculated Petitioner's FAP benefit amount as of February 3, 2020.

### **DECISION AND ORDER**

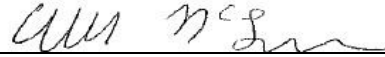
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it closed Petitioner's FAP benefit case effective January 1, 2020. The Department acted in accordance with policy when it determined Petitioner's FAP eligibility as of [REDACTED], 2020.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's FAP eligibility as of [REDACTED], 2020 and **REVERSED IN PART** with respect to the closure of Petitioner's FAP benefit case between January 1, 2020 and February 2, 2020.

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 eligibility between January 1, 2020 and February 2, 2020;
2. If Petitioner is eligible for FAP benefits, issue supplements she is entitled to receive; and
3. Notify Petitioner of its decision in writing.

EM/cg



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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-76-Hearing  
M. Holden  
D. Sweeney  
BSC4- Hearing Decisions  
MOAHR

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

