



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: June 18, 2020  
MOAHR Docket No.: 20-002825  
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 June 10, 2020, from Detroit, Michigan. Petitioner was represented by her Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by Karen Smalls, Assistance Payments Supervisor.

### **ISSUE**

Did the Department properly determine Petitioner's Food Assistance Program (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. Petitioner's household consisted solely of herself.
3. Petitioner had Supplemental Security Income (SSI) benefits in the gross amount of \$783 per month. Petitioner's SSI benefits were subject to a monthly recoupment amount of \$78.30. Petitioner also received State SSI Payment (SSP) benefits in the gross monthly amount of \$14.

4. On March 4, 2020, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefit amount was decreasing to \$59 per month effective April 1, 2020, ongoing (Exhibit A, pp. 6-10).
5. On March 19, 2020, Petitioner's AHR 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 March 4, 2020, the Department sent Petitioner notification that her FAP benefits were being reduced to \$59 per month effective April 1, 2020, ongoing. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, pp. 15-16).

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. SSI is a benefit administered by the Social Security Administration (SSA). SSI is a means-tested program that can be received based on age, disability or blindness. BEM 503 (January 2019), p. 32. The Department counts the gross amount of current SSA-issued SSI as unearned income. SSI amounts withheld to recoup overpayments due to an Intentional Program Violation (IPV) are also included in the gross amount. BEM 503, p. 33. Amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. BEM 500 (July 2017), p. 6. These amounts are excluded as income. BEM 550, p. 6. 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 \$797 in unearned income in the calculation of Petitioner's FAP benefit amount. The Department stated that Petitioner receives gross SSI benefits in the amount of \$783 per month and \$14 per month in gross SSP benefits. However, at the hearing Petitioner's AHR testified that Petitioner's SSI benefits are subject to a monthly recoupment amount of \$78.30. The Department reviewed Petitioner's State Online Query Report (SOLQ) and confirmed that Petitioner

is subject to a recoupment for a previous overissuance. Petitioner's AHR confirmed the recoupment was not for an IPV. Per policy, the Department is to reduce Petitioner's SSI payment by the amount of the overissuance when determining household unearned income. Therefore, the Department did not act in accordance with policy when it determined Petitioner's household unearned 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 one 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 \$187, the Department stated that it considered Petitioner's verified housing expense of \$475 and that she was responsible for her telephone expense, entitling her to the \$30 telephone standard. BEM 554, pp. 14-15. The Department testified that Petitioner was not eligible for the heat/utility (h/u) standard. The Department stated that Petitioner's utilities were included in her rental obligation and that she was no longer receiving the Low Income Home Energy Assistance Payment (LIHEAP) payment.

The h/u standard covers all heat and utility costs including cooling expenses. BEM 554, p. 15. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. BEM 554, p. 15. FAP groups whose heat is included in the cost of their monthly rent may still be eligible for the h/u standard if: they are billed for excess heat payments from their landlord; they have received a home heating credit in an amount greater than \$20 for the applicable period; or they have received a LIHEAP or a LIHEAP payment was made on their behalf in an amount greater than \$20 for the applicable period. BEM 554, pp. 15-19. Additionally, FAP groups who pay cooling (including room air conditioners) are eligible for the h/u standard if they verify their responsibility to pay for non-heat electric expenses. BEM 554, p. 16. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the costs of other utility expenses are eligible for the individual utility standards. BEM 554, p. 21.

At the hearing, the Department stated that Petitioner was no longer receiving the LIHEAP payment. The Department was uncertain as to when Petitioner last received the LIHEAP payment. The Department stated it was possible Petitioner received a LIHEAP payment in the 12 months previous to her redetermination. Per policy, FAP groups who are at redetermination and have received a LIHEAP payment or a LIHEAP payment was made on their behalf in an amount greater than \$20 in the certification month or in the immediately preceding 12 months prior to the certification month, they are eligible for the h/u standard. BEM 554, p. 19. If Petitioner received a LIHEAP payment in the 12 months previous to her most recent review, she would be entitled to the h/u standard. As the Department was uncertain as to Petitioner's most recent LIHEAP payment, the Department failed to establish that Petitioner was not entitled to the h/u standard. As it follows, the Department failed to establish that it properly calculated Petitioner's excess shelter deduction.

As previously stated, the Department failed to establish that it properly determined Petitioner's unearned income and Petitioner's excess shelter deduction. As it follows the Department failed to establish that it properly determined Petitioner's FAP eligibility.

### **DECISION AND ORDER**

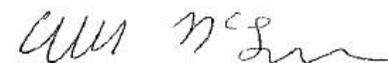
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it determined Petitioner's FAP eligibility.

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 eligibility as of April 1, 2020, ongoing;
2. If Petitioner is eligible for additional FAP benefits, issue her 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-Oakland-III-Hearings  
M. Holden  
D. Sweeney  
BSC4- Hearing Decisions  
MOAHR

**Authorized Hearing Rep. –  
Via First-Class Mail:**

[REDACTED]

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

[REDACTED]