



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: July 30, 2020  
MOAHR Docket No.: 20-004170  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

### **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 July 27, 2020 from separate locations due to COVID-19. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Kelly Teed, Hearings Facilitator.

### **ISSUE**

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit rate?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

- On May 5, 2020, the Department completed a collateral contact call with Petitioner's landlord to confirm that she pays \$162.00 per month in rent and that the remainder of her rent due of \$468.00 is paid by Section 8 assistance.
- As a result of the decrease in rental expense, Petitioner's FAP benefit rate decreased to \$16.00 per month.
- On May 21, 2020, the Department received a verbal request for hearing from Petitioner disputing the calculation of her FAP benefit rate.

## **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 disputes the Department's reduction in her FAP benefit rate to \$16.00 per month. According to the Department, the primary reason for the reduction in Petitioner's FAP benefit rate was because of the reduction in her rental expense.

To determine whether the Department properly calculated Petitioner's FAP benefit rate, an evaluation of the Department's budget calculations is necessary, starting with income. All countable, gross 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), p. 1. 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. 5-7. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9.

The Department testified and Petitioner agreed that she receives Supplemental Security Income (SSI) in the amount of \$484.00 per month, State Supplemental Security Income Payment (SSP) in the amount of \$14.00 per month, and Retirement Survivors Disability Insurance (RSDI) benefits in the amount of \$319.00 per month. Therefore, Petitioner's total monthly income is \$819.00 per month.

After consideration of income, the Department considers all appropriate deductions and expenses. There was evidence presented that the Petitioner is a Senior, Disabled, or Disabled Veteran. BEM 550. Therefore, she 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 for expenses greater than \$35.00.

BEM 554 (January 2020), p. 1; BEM 556 (January 2020), pp. 3-6.

The Department budgeted \$0.00 for a child support and dependent care expense. Petitioner did not dispute that she does not have these expenses. In addition, no medical expenses were budgeted. However, no evidence was presented but the Department should have budgeted the standard deduction of \$161.00 for a group size of one in accordance with Department policy. RFT 255 (January 2020), p. 1.

After consideration of all these expenses, Petitioner's Adjusted Gross Income (AGI) should have been \$658.00.

Once the Adjusted Gross Income is calculated, the Department must then consider the Excess Shelter Deduction. The Department budgeted that Petitioner has a rental expense of \$162.00 based upon verifications from Petitioner's landlord. While Petitioner technically has an additional housing expense, she is not responsible for the expense as it is paid by Section 8 housing assistance. Therefore, because Petitioner is not responsible for the payment, that portion of her rental expense is not considered in her FAP budget. BEM 554, p. 1. In addition to the rental expense, the Department provided Petitioner with the telephone standard deduction of \$30.00 and the non-heat electric standard deduction of \$126.00 according to the Department's testimony. RFT 255 (January 2020), p. 1. Petitioner later became eligible for the heat and utility standard deduction (H/U) due to receipt of the Low Income Home Energy Assistance Payment (LIHEAP), but her eligibility for LIHEAP did not occur until after her request for hearing. The H/U is provided to clients who are responsible for the cost of their heat and electric bills. BEM 554, p. 15. Individuals eligible for the H/U are not eligible for any other utility standards. The non-heat electric standard is provided to groups which are not responsible for a heating or cooling expense but still have a responsibility to pay for non-heat electricity. BEM 554, p. 21. Finally, the telephone standard deduction is provided to individuals who are not responsible for a heating or cooling expense but have a responsibility to pay for a traditional land-line or cell phone service. BEM 554, p. 22. The Department properly provided Petitioner with the telephone and non-heat electric standard deductions.

Once each utility standard is considered, the housing expense and utility standards are added together for a total housing expense of \$318.00. BEM 556, p. 5. Petitioner's total housing expense is then reduced by half of her AGI (\$329.00) resulting in a negative number. *Id.* Since the calculation results in a negative number, Petitioner

does not have an excess shelter cost and is not eligible for an Excess Shelter Deduction. *Id.*

If Petitioner was eligible for an Excess Shelter Deduction, the deduction would then be subtracted from her AGI to achieve her Net Income. BEM 556, pp. 5-6. Since Petitioner is not eligible for the deduction, her AGI is equal to her Net Income of \$658.00. At this point, Petitioner's Net Income is considered against the Food Assistance Issuance Tables for a FAP benefit rate of \$16.00. RFT 260 (October 2019), p. 10. The Department properly calculated Petitioner's FAP benefit rate.

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 acted in accordance with Department policy when it afforded Petitioner a FAP benefit rate of \$16.00 per month.

**DECISION AND ORDER**

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



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**Amanda M. T. Marler**  
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**

Vivian Worden  
44777 Gratiot  
Clinton Township, MI 48036

**Petitioner**



cc: FAP: M. Holden; D. Sweeney  
Macomb County AP Specialist (4)