



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: October 23, 2020  
MOAHR Docket No.: 20-005824  
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 October 21, 2020. The Petitioner was represented by her husband and Food Assistance Program (FAP) group member, [REDACTED]. The Department of Health and Human Services (Department) was represented by Hasem Hosny, Hearings Coordinator.

### **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:

1. On [REDACTED], 2020, the Department received Petitioner's Husband's (Husband) completed Wage Match Client Notice.
2. On the same day, the Department also received Husband's paystubs dated July 9, 2020 for \$ [REDACTED]; July 23, 2020 for \$ [REDACTED]; and August 6, 2020 for \$ [REDACTED].
3. On August 12, 2020, the Department issued a Notice of Case Action to Petitioner notifying her that her FAP benefit rate would decrease to \$159.00 per month effective September 1, 2020 for a group size of four with \$ [REDACTED] in earned income, a standard deduction of \$172.00, a mortgage of \$662.40, and finally the heat and utility standard deduction (H/U) of \$518.00.

4. On September 8, 2020, the Department received Petitioner's request for hearing disputing the Department's calculation of Husband's income in addition to paystubs for August 6, 2020 and August 20, 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 disputes the Department's calculation of her FAP benefit rate. To determine whether the Department properly calculated it, 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 2020), 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. For income received bi-weekly, the Department averages the income received in the month and multiplies it by 2.15. *Id.*

To calculate Husband's standardized earned income, the Department considered employment verifications dated July 9, 2020 and July 23, 2020 which covered the period between June 19, 2020 and July 16, 2020. These two paychecks do not reflect a 30-day period of income by paycheck date or by reviewing the 30 days immediately preceding the verification of employment on August 10, 2020. Therefore, the third check submitted by Petitioner for August 6, 2020 should have been considered. The fourth paycheck submitted with Petitioner's request for hearing is not considered here because the Department did not have that information available to it at the time Petitioner's eligibility was determined. The three paychecks considered here were for \$[REDACTED]; \$[REDACTED], and \$[REDACTED] respectively. When these paychecks are averaged and multiplied by 2.15 pursuant to policy because they are received bi-

weekly, the standardized monthly income is \$ [REDACTED]. The Department previously budgeted \$ [REDACTED] in error because of its failure to budget the full 30 days of income.

Therefore, total monthly household income is \$ [REDACTED]

After consideration of income, the Department considers all appropriate deductions and expenses. No one in the household is considered to be a Senior, Disabled, or Disabled Veteran (SDV). BEM 550. Therefore, 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.
- 20% earned income deduction.

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

The Department budgeted \$0.00 for child support, dependent care, and medical expenses which Petitioner does not dispute. The Department properly budgeted the standard deduction of \$172.00 for a group size of four in accordance with Department policy. RFT 255 (January 2020), p. 1. Finally, the group receives a 20% deduction for the portion of income which is earned or \$497.00.

After consideration of all these expenses and deductions, Petitioner's Adjusted Gross Income (AGI) is \$ [REDACTED] (rounded down to the nearest dollar).

Once the Adjusted Gross Income is calculated, the Department must then consider the Excess Shelter Deduction. Petitioner has a mortgage expense of \$663.00 (rounded up to the nearest dollar) per month. In addition, she is responsible for her heat and electric bills. The Department properly budgeted the housing expense and afforded Petitioner the heat and utility standard deduction (H/U) of \$518.00. 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 such as trash, water, sewer, or telephone expenses. *Id.* Once the utility standards are considered, the housing expense (\$663.00) and utility standards (\$518.00) are added together for a total housing expense of \$1,181.00. BEM 556, p. 5. Petitioner's total housing expense is then reduced by half of her AGI (\$ [REDACTED]) resulting in an excess shelter cost of \$272.00. *Id.*

The excess shelter cost is then subtracted from her AGI to achieve her Net Income of \$ [REDACTED]. BEM 556, pp. 5-6. At this point, Petitioner's Net Income is considered against the Food Assistance Issuance Tables for a FAP benefit rate of \$182.00 per month. RFT 260 (October 2019), p. 22. The Department previously calculated a

benefit rate of \$159.00. Since the Department failed to consider a full 30 days of income, the Department's calculation of Petitioner's FAP benefit rate was incorrect.

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 calculated Petitioner's FAP benefit rate.

### **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. Reprocess Husband's wage verifications for FAP;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AMTM/cc



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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

**Via Email:**

MDHHS-Macomb-36-Hearings  
BSC4-HearingDecisions  
M. Holden  
D. Sweeney  
MOAHR

**Petitioner- Via USPS:**

