



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: November 6, 2020  
MOAHR Docket No.: 20-006211  
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 November 4, 2020 at 8:30 AM. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Lori Turner, Eligibility Specialist and Assistance Payments Worker; however, Ms. Turner did not appear for the hearing until 8:59 AM and did not present any evidence.

### **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. Petitioner submitted an Application to the Department for FAP benefits sometime on or v before [REDACTED] 2020.
2. On September 2, 2020, the Department issued a Notice of Case Action to Petitioner informing her that her FAP Application had been denied due to excess income.
3. Petitioner's household has the following sources of income:
  - a. [REDACTED] (Child A) \$740.70 in Supplemental Security Income (SSI)
  - b. [REDACTED] (Child B) \$783.00 in SSI

- c. [REDACTED] (Child C) \$831.00 in Retirement Survivors Disability Insurance (RSDI)
  - d. [REDACTED] (Child D) \$503.00 in RSDI
  - e. A one-time child support payment for Child A on June 2, 2020 of \$635.73
  - f. A one-time child support payment for Child D on May 11, 2020 of \$334.29
4. Petitioner has a housing expense of \$456.00, but once corrected after a hearing will be reduced to \$413.00; the hearing has not yet been held.
  5. Petitioner is responsible for the cost of heat, electric, water, insurance, and upkeep of her home.
  6. Petitioner has a group size of 5.
  7. Petitioner has a garnishment for her credit card and utility services.
  8. Petitioner pays \$300.00 per month for childcare services.
  9. Based upon the Department's denial of her FAP Application, Petitioner submitted a request for hearing disputing the Department's decision.

### **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 Petitioner's FAP benefit rate, the evaluation first starts with consideration of all countable earned and unearned income available to the client; 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.

Petitioner's household has several sources of unearned income. The combined total for SSI and RSDI benefits of all household members is \$2,857.70. Each person's SSI and RSDI benefits are received on a monthly basis; therefore, there is no need to further standardize this income.

Petitioner's household also received two one-time payments for child support of \$635.73 and \$334.29. Policy provides that child support payments must be budgeted so that the average support payment received in the past three calendar months is utilized unless changes are expected. BEM 505, p. 4. Policy further provides that amounts which are unusual or not expected to continue should not be included in the FAP budget. Since each of these payments was a one-time payment and were not expected to continue, neither should have been considered in the Department's determination of FAP eligibility.

The group had no other sources of income; therefore, the total household income is \$2,857.70.

After consideration of income, the Department considers all appropriate deductions and expenses. Petitioner's group has Senior, Disabled, or disabled Veteran (SDV) group members; therefore, the group is eligible for the following deductions to income:

- Dependent care expense.
- Medical expenses that exceed \$35.00 for the SDV individuals
- Excess shelter deduction.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.

BEM 550 (January 2017), pp. 1-1; BEM 554 (August 2020), p. 1; BEM 556 (January 2020), pp. 3-6.

No evidence was presented that Petitioner has provided proof of medical or child support expenses to the Department. Petitioner previously notified the Department of her \$300.00 per month childcare expense which should have been budgeted. In addition, Petitioner has a group size of five so she is eligible for the standard deduction of \$203.00. RFT 255 (January 2020), p. 1; BEM 556, p. 4.

After consideration of each of these deductions, Petitioner's Adjusted Gross Income (AGI) would be calculated by subtracting each of these expenses from her gross income. Therefore, Petitioner's AGI is \$2,354.00

Once the AGI is calculated, the Department must then consider the Excess Shelter Deduction. BEM 554, p. 1; 7 CFR 273.9(d)(6). The Excess Shelter Deduction is

calculated by adding Petitioner's Housing Costs to any of the applicable standard deductions and reducing this expense by half of Petitioner's AGI. BEM 556, pp. 4-7; 7 CFR 273.9(d)(6)(ii). Petitioner has a current rental expense of \$456.00 per month; this rental expense will be reduced to \$413.00 once her income is adjusted. In addition, to the housing expense, the Department considers a client's utility expenses. The heat and utility standard deduction (H/U) covers all heat and utility costs including cooling except actual utility expenses (repairs or maintenance). BEM 554 (October 2019), p. 15. The Department is required to annually review standards such as the H/U and make adjustments to reflect changes in costs. 7 CFR 273.9(d)(6)(iii)(B). Effective October 1, 2019, the Department completed the review of standards as required by Federal Regulations and implemented a new H/U of \$518.00. RFT 255 (January 2020), p. 1. FAP groups that receive the H/U do not receive any other individual utility standards. *Id.* The expenses outlined here are the only expenses considered for purposes of calculating the FAP budget and eligibility determination. Petitioner's total housing cost is \$974.00 which is reduced by 50% of Petitioner's AGI (\$1,177.00) resulting in a negative number. *Id.* Since Petitioner does not have an excess cost of shelter greater than her income, she is not eligible for the excess shelter deduction.

Since Petitioner is not eligible for an excess shelter deduction, her AGI is equal to her Net Income, \$2,354.00. *Id.* The Net Income Limit for a group size of five is \$2,515.00. RFT 260 (October 2019); BEM 550 (January 2017), p. 1. Petitioner's Net Income falls below the Net Income Limit and she is eligible 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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined that Petitioner had excess income and was ineligible for FAP benefits.

### **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 Petitioner's Application for FAP benefits that was associated with the [REDACTED] 2020 Notice of Case Action;
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-Wayne-17-Hearings  
BSC4-HearingDecisions  
M. Holden  
D. Sweeney  
MOAHR

**Petitioner- Via USPS:**

