



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]

Date Mailed: February 23, 2021  
MOAHR Docket No.: 20-008132  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Colleen Lack**

**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 February 10, 2021. [REDACTED] the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Andrea Edwards, Eligibility Specialist (ES). Tina Bradley, ES, was present as an observer.

During the hearing proceeding, the Department’s Hearing Summary packet was admitted as Exhibit A, pp. 1-15.

**ISSUE**

Did the Department properly determine Petitioner’s eligibility for the Food Assistance Program (FAP)?

**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 March 9, 2020, a Notice of Case Action was issued to Petitioner stating FAP was increased effective April 1, 2020 through September 30, 2021, with a monthly allotment of \$ [REDACTED] for a household size of one. (Exhibit A, pp. 5-9)
2. Effective June 1, 2020, the Department only issued Petitioner \$ [REDACTED] per month in regular, ongoing FAP benefits. (Exhibit A, pp. 10-12)
3. Due to the COVID-19 pandemic, the Department issued supplemental FAP benefits to Petitioner bring the total monthly allotment up to the maximum amount for the group size. (Exhibit A, pp. 10-12)

4. Petitioner's FAP case was due for Redetermination by October 1, 2020. Petitioner had to have the paperwork re-sent to her because she did not receive the initial documents. (Exhibit A, p. 5; Petitioner Testimony)
5. On November 2, 2020, a Notice of Case Action was issued to Petitioner stating the FAP monthly allotment would be \$[REDACTED]. (ES Testimony)
6. On November 24, 2020, Petitioner requested a hearing asserting that she was not receiving FAP benefits at the maximum household amount during the COVID-19 pandemic, specifically March through November and later if this allotment is extended. (Exhibit A, p. 4)

### **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.

Petitioner requested a review of the FAP issuance as of March 2020. (Exhibit A, p. 4) However, pursuant to BAM 600, the client or authorized hearing representative (AHR), has 90 calendar days from the date of the written notice of case action to request a hearing. For FAP only, the client or AHR may request a hearing disputing the current level of benefits at any time within the benefit period. BAM 600, January 1, 2020, pp. 6-7. A Notice of Case Action was issued to Petitioner on March 9, 2020. (Exhibit A, pp. 5-9) Petitioner's November 24, 2020, hearing request was not timely filed to contest the Department's March 9, 2020, determination.

The ES testified that written notice that Petitioner's FAP benefits would be decreased to \$[REDACTED] per month was issued November 2, 2020. The ES explained that Petitioner reported a change in shelter expense on a mid-certification contact. When this change was processed, it resulted in the determination that Petitioner was only eligible for \$[REDACTED] per month of FAP benefits. (ES Testimony)

However, the Benefit Summary Inquiry shows that effective June 1, 2020, the Department only issued Petitioner \$[REDACTED] per month in regular, ongoing FAP benefits. (Exhibit A, pp. 10-12) There was no evidence presented to establish that written notice was issued to Petitioner of the reduction to \$[REDACTED] effective June 1, 2020. Therefore, it is found that there is jurisdiction to review the Department's actions as of June 1, 2020.

In calculating the FAP budget, the Department considers unearned income, which includes Social Security Administration (SSA) issued benefits. The Department counts the gross benefit amount of current SSA-issued benefits as unearned income. BEM 503, January 1, 2020, pp. 29-30 and 34-36.

For FAP, a shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, (January 1, 2020), pp. 13-14. Heat and utility expenses can also be included as allowed by policy. The heat/utility (h/u) standard covers all heat and utility costs including cooling, except actual utility expenses; for example, installation fees etc. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. A FAP group which has a heating expense or contributes to the heating expense separate from rent, mortgage or condominium/maintenance payments must use the h/u standard. FAP groups whose heat is included in their rent may still qualify for the h/u standard. Some additional ways include but are not limited to, receipt of the Home Heating Credit (HHC) or a Low Income Home Energy Assistance Payment (LIHEAP). The amount of either payment must be greater than \$20 in the month of application or in the immediately preceding 12 months prior to the application month. A FAP group which has no heating/cooling expense but has a responsibility to pay for non-heat electricity separate from rent/mortgage or condo/maintenance fees must use the non-heat electric standard. The standard covers only non-heat electric. BEM 554, pp. 15-21. Verified allowable medical expenses for a senior/disabled/disabled veteran (SDV) in the FAP group are also considered. BEM 554, pp. 8-12.

Effective October 1, 2019, the maximum FAP issuance amount for a group size of one was \$194.00. RFT 260, October 1, 2019. Effective October 1, 2020, the maximum FAP issuance amount for a group size of one was \$204.00. RFT 260, October 1, 2020.

The testimony of the ES established that the Department has not been properly budgeting utility expenses for Petitioner. The Department has been including both the full heat/utility (h/u) standard as well as the individual non-heat electric standard. (ES Testimony) Pursuant to the BEM 554 policy, FAP groups that qualify for the h/u standard do not receive any other individual utility standards.

Petitioner has continued to receive the maximum FAP issuance amount for a group size of one. Due to COVID-19, supplemental FAP benefits are being issued for some months to households currently receiving FAP benefits to bring the case to the maximum monthly amount for the group size. A Memorandum from the Economic Stability Administration (ESA) indicates the approval was initially for two months, March 2020 and April 2020. Subsequently, approvals were made on a month-by-month basis and Michigan was approved to issue the additional benefits for each additional month thus far. The Memorandum is clear that this is a supplemental emergency allotment, which does not change the eligibility determination. ESA 2020-15, as updated September 8, 2020. Effective October 1, 2019, the maximum FAP issuance amount for a group size of one was \$194.00. RFT 260, October 1, 2019. Effective October 1, 2020, the maximum FAP issuance amount for a group size of one was \$204.00. RFT 260,

October 1, 2020. The Benefit Summary Inquiry shows that supplements were issued bringing Petitioner to the maximum monthly issuance amount for her group size. (Exhibit A, pp. 10-12)

Overall, the evidence presented for this case indicates that Department did not issue written notice of the reduction in Petitioner's FAP benefits that was effective June 1, 2020 and there was an error regarding the budgeted utility expenses. Therefore, the Department's actions cannot be upheld. It is noted that Petitioner has received the maximum monthly amount of FAP benefits for her group size between the ongoing and supplemental FAP benefit amounts issued for each month. Therefore, any changes that may result from re-determining Petitioner's eligibility should only affect what portion of the benefits Petitioner already received would have been ongoing benefits versus supplemental 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 did not act in accordance with Department policy when it determined Petitioner's eligibility for FAP.

### **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. Re-determine Petitioner's eligibility for FAP retroactive to June 1, 2020 in accordance with Department policy.

CL/ml



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Colleen Lack  
Administrative Law Judge  
for Elizabeth Hertel, 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**

Pam Assemany  
St. Clair County DHHS – via electronic  
mail

BSC2 – via electronic mail

M. Holden – via electronic mail

D. Sweeney – via electronic mail

**Petitioner**

[REDACTED] – via first class mail

[REDACTED]

[REDACTED] MI [REDACTED]