



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: March 10, 2021  
MOAHR Docket No.: 21-000082  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

### **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 March 4, 2021, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Juanita Munoz, Hearing Facilitator.

### **ISSUE**

Did the Department properly calculate the amount of Petitioner's Food Assistance Program (FAP) benefits?

### **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 is an ongoing recipient of FAP benefits.
2. On or around January 2, 2021, the Department sent Petitioner a Notice of Case Action advising him that effective February 1, 2021, he was approved for FAP benefits in the amount of \$16. (Exhibit A, pp. 13-17)
  - a. The Budget Summary outlined in the Notice of Case Action indicates that Petitioner's housing expenses were \$283 and that he has \$0 in medical expenses.
3. On or around January 8, 2021, Petitioner requested a hearing disputing the Department's action with respect to his FAP case, specifically, the miscalculation of his housing and medical expenses. Petitioner's hearing request also references the Medical Assistance (MA) program; however, during the hearing, Petitioner

confirmed that there was no issue with his MA case and that his dispute was regarding his medical expenses for his FAP case.

### **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).

#### **MA**

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

A client's request for hearing must be in writing and signed by an adult member of the eligible group, or authorized hearing representative (AHR). Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (January 2020), pp. 1-2. Moreover, BAM 600, pp. 6-7 provides that a request for hearing must be received in the Department's local office within 90 days of the date of the written notice of case action. The Michigan Office of Administrative Hearings and Rules (MOAHR) may grant a hearing about a denial of an application and/or supplemental payments; reduction in the amount of program benefits or service; suspension or termination of program benefits or service; restrictions under which benefits or services are provided or delay of any action beyond the standards of promptness. BAM 600, pp. 4-6.

In this case, Petitioner's hearing request referenced the MA program. After some discussion, Petitioner confirmed that there was no issue regarding his MA benefits. There was no evidence that the Department had taken any negative action on Petitioner's MA case in the 90 days prior to the hearing request. Petitioner did not indicate that he received any Health Care Coverage Determination Notice or other eligibility notice concerning his MA case. As such, Petitioner's hearing request with respect to the MA is **DISMISSED**. The hearing proceeded with respect to Petitioner's FAP benefits.

#### **FAP**

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 requested a hearing to dispute the information contained in the January 2, 2021 Notice of Case Action, specifically the Department's misapplication of his housing and medical expenses. The Department testified that after receiving Petitioner's hearing request, it updated Petitioner's housing and medical expenses and recalculated his FAP budget for February 2021, ongoing, and determined that he was eligible for \$86 monthly. The Department presented a FAP EDG Net Income Results Budget for February 2021 that was thoroughly reviewed to determine if the Department properly concluded that Petitioner's household was eligible for \$86 in monthly FAP benefits. (Exhibit A, pp. 7-10)

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 2020), pp. 1 – 5. The Department considers the gross amount of money earned from Retirement Survivors Disability Insurance (RSDI) or Social Security in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (January 2021), pp. 29-31. The budget shows that the Department concluded Petitioner had total gross unearned income of \$1,143 which the Department testified consisted of his monthly Social Security. Petitioner confirmed that this amount was correct. Therefore, the unearned income was properly calculated.

The deductions to income on the net income budgets were also reviewed. Petitioner's FAP group includes a senior/disabled/veteran (SDV) member. BEM 550 (October 2020), pp. 1-2. Groups with one or more SDV members are eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Medical expenses for the SDV member(s) that exceed \$35.
- Standard deduction based on group size.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (January 2021), p. 1; BEM 556 (February 2021), p. 1-8.

In this case, Petitioner's group did not have any earned income, thus, there was no applicable earned income deduction. There was no evidence presented that Petitioner had any out-of-pocket dependent care or child support expenses; therefore, the budget properly did not include any deduction for dependent care or child support. The Department properly applied a standard deduction of \$167 which was based on Petitioner's confirmed group size of one. RFT 255 (January 2021), p. 1. With respect to the excess shelter deduction of \$420, the Department properly applied the \$537 heat and utility standard and considered Petitioner's responsibility for monthly rent in the confirmed amount of \$288.

The budget shows a medical deduction of \$165. Petitioner testified that he is responsible for out-of-pocket medical expenses of at least \$40 monthly for over-the-counter medications. He indicated that he is also responsible for a yearly deductible of \$200. An SDV group that has a verified one-time or ongoing medical expense(s) of more than \$35 for an SDV person will receive the standard medical deduction of \$165. If the group has actual medical expenses that are more than the standard medical deduction, they have the option to verify their actual expenses instead of receiving the standard medical deduction. In this case, Petitioner's monthly medical expenses were less than \$165, thus, the Department properly applied the standard medical deduction.

After further review, the Department properly determined Petitioner's total income amount of \$1,143 and took into consideration the appropriate deductions to income including the \$167 standard deduction, the \$420 excess shelter deduction, and the \$165 standard medical deduction to conclude that Petitioner had net income of \$391.

However, the Department improperly determined that Petitioner was eligible for only \$86 in monthly FAP benefits. Looking at the FAP EDG Net Income Results Budget, it appears that the Department calculated Petitioner's benefits by taking 30% of his net income (\$118) and subtracting that amount from the maximum FAP benefits his group is eligible to receive (\$204) to conclude that he was eligible for \$86. While this calculation is correct in certain cases, this policy and benefit calculation does not apply to for group sizes of 1 or 2. Instead, the Department is to rely on RFT 260 to determine a client's FAP benefit amount. See BEM 556, pp. 1-8.

Although it was established that Petitioner had been receiving the maximum amount of FAP benefits in accordance with Economic Stability Administration (ESA) Memorandum (Memo) 2020-15, COVID-19 Response Emergency Food Assistance Allotment and ESA Memo 2021-03 COVID-19 Food Assistance Emergency Allotment, which provide that active FAP groups who are not currently receiving the maximum amount of benefits for their group size will receive a supplement to bring their benefit amount up to the maximum amount allowed for their group size, effective January 1, 2021, based on net income of \$391, Petitioner's one person FAP group is eligible for \$116 in monthly FAP benefits, which would be the correct amount upon expiration of the COVID-19 waiver and continuing through June 30, 2021. See RFT 260 (January 1, 2021), p. 6.

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 benefits for the month of February 2021, ongoing.

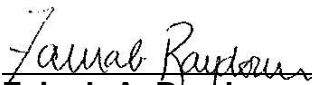
### **DECISION AND ORDER**

Accordingly, the hearing request with respect to MA is **DISMISSED** and Department's FAP 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. Recalculate Petitioner's FAP budget for February 1, 2021, ongoing;
2. Issue FAP supplements to Petitioner from February 1, 2021, ongoing, for any FAP benefits he was eligible to receive but did not, in accordance with Department policy; and
3. Notify Petitioner in writing of its decision.

ZB/cc

  
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**Zainab A. Baydoun**  
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

**Via Email:**

MDHHS-Wayne-41-Hearing  
BSC4-HearingDecisions  
D. Sweeney  
M. Holden  
C. George  
EQADHearings  
MOAHR

**Petitioner- Via USPS:**

