



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: March 15, 2021  
MOAHR Docket No.: 21-000177  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Ellen McLemore**

**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 11, 2021, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by April Williams, Assistance Payments Supervisor.

**ISSUE**

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

**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 was an ongoing FAP recipient.
2. Petitioner completed a redetermination related to her FAP benefit case.
3. Petitioner's household consisted of herself and her three children.
4. Petitioner had unearned income in the form of Unemployment Compensation Benefits (UCB) in the gross amount of \$████ per week (Exhibit A, pp. 6-7).
5. Petitioner had unearned income in the form of child support (Exhibit A, pp. 8-10).
6. On December 28, 2020, the Department sent Petitioner a Notice of Case Action informing her that she was approved for FAP benefits in the amount of \$61 per month effective January 1, 2021, ongoing (Exhibit A, pp. 11-12).

7. On January 22, 2021, Petitioner submitted a request for hearing disputing the Department's actions.

### **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 was an ongoing FAP recipient. Petitioner completed a redetermination related to her FAP benefit case. The Department determined that Petitioner was eligible for FAP benefits in the amount of \$61 per month. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, pp. 13-15).

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 2017), pp. 1-5. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received biweekly is converted to a standard amount by multiplying the average of the biweekly pay amounts by the 2.15 multiplier. BEM 505, pp. 7-9. Income received weekly is multiplied by a 4.3 multiplier. BEM 505, pp. 7-9. Income received twice per month is added together. BEM 505, pp. 7-9.

Per the budget provided, the Department included \$[REDACTED] in unearned income in Petitioner's FAP budget. The Department provided Petitioner's Consolidated Inquiry (CI) report showing that Petitioner received UCB income in the amount of \$[REDACTED] per week, paid on a biweekly basis. Petitioner's biweekly benefit rate of \$[REDACTED] multiplied by the 2.15 multiplier is \$[REDACTED].

When calculating child support income, the Department uses the monthly average of the child support payments received in the past three calendar months, unless changes are expected. BEM 505 (October 2017), p. 4. If there are known changes that will affect the amount of the payments in the future, the Department will not use the previous three months. BEM 505, p. 4. If the past three months' child support is not a good indicator of future payments, the Department will calculate an expected monthly amount for the

benefit month based on available information and discussion with the client. BEM 505, p. 5.

Per the CI report, Petitioner also had unearned income in the form of child support. The Department testified that it utilized the months of October, November and December 2020 to calculate Petitioner's child support income. In October 2020, Petitioner received payments in the amounts of \$██████, \$██████ and \$██████ for her three children, totaling \$██████. In November 2020, Petitioner received payments in the amount of \$██████, \$██████ and \$██████ for her three children, totaling \$██████. In December 2020, Petitioner received payments in the amount of \$██████, \$██████ and \$██████ for her three children, totaling \$██████. When averaging the three months of child support, Petitioner's total countable monthly child support amount is \$██████.

Petitioner's standard monthly child support income of \$██████, combined with Petitioner's standard monthly UCB income of \$██████, results in a monthly income of \$██████. The Department was unable to provide information as to how it obtained the \$██████ figure utilized in the FAP budget when calculating Petitioner's FAP benefit amount. Therefore, the Department failed to establish it properly calculated Petitioner's household income. As it follows, the Department failed to establish that it properly calculated Petitioner's FAP benefit amount.

### **DECISION AND ORDER**

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 Petitioner's FAP eligibility.

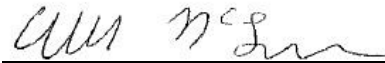
Accordingly, the Department's decision is **REVERSED**.

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. Redetermine Petitioner's FAP eligibility as of January 1, 2021, ongoing;

2. If Petitioner is eligible for additional FAP benefits, issue supplements she is entitled to receive; and
3. Notify Petitioner of its decision in writing.

EM/jem



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**Ellen McLemore**  
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-15-Greydale-Hearings  
BSC4-HearingDecsions  
M. Holden  
D. Sweeney  
MOAHR

**Petitioner - Via First-Class Mail:**

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