



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]

Date Mailed: June 9, 2021  
MOAHR Docket No.: 21-000392  
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 June 1, 2021, from Detroit, Michigan. Petitioner appeared for the hearing with his daughter, [REDACTED] and represented himself. Father [REDACTED] appeared with Petitioner and served as Albanian interpreter. The Department of Health and Human Services (Department) was represented by Valerie Foley, 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 was an ongoing recipient of FAP benefits in the amount of \$194.
2. Petitioner's FAP case was set to close effective December 31, 2020 because the Department had not received a completed Mid-Certification review.
3. On or around [REDACTED], 2021, Petitioner submitted a new application for FAP benefits. (Exhibit A, pp. 5-9)
4. During an application interview with the Department on [REDACTED], 2021, Petitioner reported that he resides with his daughter. Petitioner and his daughter reported that she receives \$400 in monthly rent from Petitioner which includes utilities. (Exhibit A, pp. 10-12)

5. On or around January 26, 2021, Petitioner submitted a handwritten statement indicating that he pays monthly rent of \$450 which includes utilities such as water, gas, electricity, cable, and internet. Petitioner identified an incorrect date of January 26, 2020 on the letter and thus, the Department found it to be unacceptable as it was also completed by Petitioner and not the landlord. The Department instructed Petitioner to have his daughter submit a shelter verification statement. (Exhibit A, p. 13)
6. On January 26, 2021, the Department sent Petitioner a Notice of Case Action advising him that he was approved for FAP benefits of \$45 monthly. (Exhibit A, pp. 14-18)
  - a. The Department conceded that it failed to consider any housing expenses in the calculation of Petitioner's FAP benefits.
7. On January 28, 2021, Petitioner requested a hearing disputing the Department's actions with respect to his FAP benefits. (Exhibit A, pp. 2-3)
8. In March 2021, Petitioner's daughter (as his landlord) submitted documentation to the Department indicating that Petitioner is billed \$400 for monthly rent, \$20 for heat/gas, \$20 for water, and \$10 for internet/Albanian TV. (Exhibit C, p. 7)

### **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 requested a hearing disputing the closure of his FAP case and the calculation of his FAP benefits after his new application was submitted. The Department testified that after receiving Petitioner's request for hearing, it discovered that Petitioner had timely submitted the Mid-Certification and thus any potential case closure would have been in error. The Department testified that there was no lapse in Petitioner's FAP benefits, as his [REDACTED], 2021 FAP application was approved. The Department testified that prior to January 2021, it had not been budgeting Petitioner's Supplemental Security Income (SSI) in the calculation of his FAP benefits and that after including the income, Petitioner's FAP benefits were decreased. Additionally, the

Department conceded that it initially failed to consider Petitioner's housing expenses but later recalculated the FAP budget to include the verified housing expenses of \$450.

It is noted that the Department presented evidence that Petitioner received the maximum amount of FAP benefits based on his group size of one in accordance with ESA Memo 2020-15 COVID-19 Response Emergency Food Assistance Allotment and ESA Memo 2021-03 COVID-19 Food Assistance Emergency Allotment. The evidence established that Petitioner continued to receive supplements, increasing his FAP allotment to the maximum amount from January 2021 through May 2021. (Exhibit B). Because Petitioner received the maximum amount of FAP benefits through May 2021, a review of his FAP benefit eligibility for June 2021, ongoing will be addressed below.

The Department presented a FAP EDG Net Income Results Budget that was thoroughly reviewed to determine if the Department properly concluded that Petitioner's household was eligible for \$57 in monthly FAP benefits. (Exhibit C, pp. 5-7). 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 Supplemental Security Income (SSI) in the calculation of unearned income for purposes of FAP budgeting. BEM 503 (April 2021), pp. 35-37. The budget shows that the Department concluded Petitioner had total gross unearned income of \$794 which the Department testified consisted of his monthly SSI benefit of \$794. 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 (April 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. Petitioner confirmed that although he had out of pocket medical expenses, he had not submitted any verification of these expenses to the Department. There was no evidence presented that Petitioner had any out-of-pocket dependent care, medical expenses, or child support expenses; therefore, the budget properly did not include any deduction for dependent care, medical expenses, 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, the budget shows that the Department considered \$450 as a housing expense. The Department did not apply the heat and utility standard or any of the other individual utility standards to Petitioner's excess shelter deduction, which Petitioner disputed. Petitioner and his daughter asserted that Petitioner's monthly rent is \$400, and he is responsible for his share of utilities in the home of an additional \$50. The Department confirmed receiving the shelter verification statement from Petitioner's landlord detailing the amounts paid towards rent and utilities, specifically, \$400 for monthly rent, and an additional \$20 for heat/gas, \$20 for water, and \$10 for internet/Albanian TV, totaling \$450 but could not explain whether the heat and utility standard or any other utility standard should be applied to Petitioner's FAP budget.

The heat/utility standard (h/u) standard covers all heat and utility costs including cooling expenses. 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 must use the h/u standard. If questionable, the Department can verify this expense through collateral contact with the landlord. BEM 554, pp. 16-25. Based on the evidence presented at the hearing, the Department had verification that Petitioner contributed to the heating expense in the home separate from his monthly rent. Therefore, he was eligible for the \$537 h/u standard to be applied to the excess shelter deduction.

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 because of the errors identified above with respect to the excess shelter deduction, the Department did not act in accordance with Department policy when it calculated Petitioner's FAP benefits for the month of June 2021, ongoing.

### **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. Recalculate Petitioner's FAP budget for June 1, 2021, ongoing to include the heat and utility standard and using RFT 260 to determine his FAP benefit allotment;
2. Issue FAP supplements to Petitioner from June 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/jm

  
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**Zainab A. Baydoun**  
Administrative Law Judge

**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-19-Hearings  
BSC4-HearingDecisions  
M. Holden  
D. Sweeney  
MOAHR

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

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