



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:  
MOAHR Docket No.: 21-000646  
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 18, 2021, from Detroit, Michigan. Petitioner was present with her daughter/Arabic interpreter, ██████████. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearing Facilitator.

### **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. On ██████████ 2020, Petitioner submitted an application for State Emergency Relief (SER) benefits. As a result, the Department updated Petitioner's eligibility information and redetermined her FAP benefit amount.
3. Petitioner's household consisted of herself, her husband and their four children.
4. Petitioner and her husband each had unearned income in the form of Supplemental Security Income (SSI) benefits in the gross monthly amount of \$██████████. Petitioner and her husband each had unearned income in the form of State SSI Payment (SSP) income in the gross amount of \$██████████ per calendar quarter.

5. On January 6, 2021, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefits were being reduced to \$456 per month based on a group size of three (Exhibit A, pp. 7-11).
6. On February 5, 2021, Petitioner submitted a request for hearing disputing the Department's actions related to her FAP and SER benefit cases.

### **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).

#### **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 was an ongoing FAP recipient with a group size of five. On December 15, 2020, Petitioner submitted an SER application. The Department updated Petitioner's eligibility information and determined she was eligible for FAP benefits in the amount of \$456 with a group size of three. The Department presented a FAP budget to establish the calculation of Petitioner's FAP benefit amount (Exhibit A, p. 16).

FAP budget calculations require the consideration of the group size. The Department will determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. BEM 212 (July 2019), p. 1. The FAP group composition is established by determining all of the following: who lives together, the relationship(s) of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. BEM 212, p. 6. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p. 1.

A person is in student status if she is: age 18 through 49 and enrolled half-time or more in a: vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate, or a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245 (January 2020), p. 3-4. In order for a person in student status to be eligible, they must meet one of the following criteria: (i) receiving FIP; (ii) enrolled in an institution of higher

education as a result of participation in a Job Training Partnership Act (JTPA), a program under the Trade Readjustment Act or another state or local government employment and training program; (iii) physically or mentally unfit for employment; (iv) employed for at least an average of 20 hours per week and paid for such employment; (v) self-employed for at least an average of 20 hours per week and earning an average weekly income at least equivalent to the federal minimum wage multiplied by 20 hours; (vi) participating in a state of federally-funded work study program during the regular school year; (vii) providing more than half of the physical care of a group member under the age of six; (viii) providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate child care is not available to enable the person to attend class and work at least 20 hours per week or participate in a state or federally-financed work study program during the school year; or (ix) a single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12. BEM 245, p. 5. For the care of a child under age six, consider the student to be providing physical care as long as he or she claims primary responsibility for such care, even though another adult may be in the FAP group. BEM 245, p. 5.

The Department testified that only one of Petitioner's four children were included in her FAP group. At the hearing, Petitioner's daughter confirmed that one of her siblings was 26 years old and purchased and prepared food separately from the rest of the family. Additionally, Petitioner's daughter confirmed that she and another one of her siblings are full-time college students and do not meet any of the conditions set forth in BEM 245 to be eligible for FAP benefits. Therefore, the Department properly determined that Petitioner has a FAP group size of three.

It should be noted that effective April 1, 2021, two new exceptions to the student status policy will be effective until 30 days after the COVID-19 public emergency is lifted. BPB 2021-012 (April 2021), p. 1. Those exceptions include students who have an Expected Family Contribution of \$0 in the current academic year based on the student's Free Application for Federal Student Aid (FAFSA) and students eligible under state or federally funded work study programs for individuals who are deemed as eligible to participate in work study but may not be actively participating in work study hours. BPB 2021-012, p. 1. Petitioner's daughter indicated that she does receive student aid. Therefore, Petitioner's two children who are enrolled in secondary education may be eligible for FAP benefits effective April 1, 2021.

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. For FAP benefit cases, the Department includes the gross amount of current Social Security Administration (SSA)-issued SSI as unearned income. BEM 503 (January 2020), p. 34. Whenever an SSA-issued independent living or household of another payment is budgeted, the Department will include the monthly SSP payment amount as unearned income. BEM 503, p. 35.

Per the budget provided, the Department included \$[REDACTED] in unearned income in Petitioner's FAP budget. The Department testified that Petitioner and her husband both receive monthly SSI benefits in the amount of \$[REDACTED] per month. Petitioner and her husband also both receive SSP benefits in the gross amount of \$[REDACTED] per quarter, which averages to \$[REDACTED] per month. Petitioner's and Petitioner's husband's combined SSI and SSP income results in a standard monthly income amount of \$[REDACTED]. It is unclear how the Department obtained the \$[REDACTED] figure. However, the error is in Petitioner's favor, and therefore, harmless.

The deductions to income on the net income budget were also reviewed. There was evidence presented that the Petitioner's group includes a senior/disabled/veteran (SDV). BEM 550. Thus, the group is eligible for the following deductions to income:

- Dependent care expense.
- Excess shelter.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.
- Medical deduction.

BEM 554 (January 2020), p. 1; BEM 556 (January 2020), p. 3.

Petitioner's FAP benefit group size of three justifies a standard deduction of \$167. RFT 255 (January 2020), p. 1. There was no evidence presented that Petitioner had any out-of-pocket dependent care, child support expenses or out-of-pocket medical expenses. Therefore, the budget properly excluded any deduction for dependent care, child support or medical expenses.

In calculating the excess shelter deduction of \$784, the Department stated that it considered Petitioner's verified housing expense of \$769.24 and that she was responsible for a monthly heating expense, entitling her to the heat/utility standard of \$537. BEM 554, pp. 14-15. The Department testified when calculating Petitioner's excess shelter amount, they added the total shelter amount and subtracted 50% of the adjusted gross income. Petitioner's excess shelter deduction was properly calculated at \$784 per month.

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. After subtracting the allowable deductions, the Department properly determined Petitioner's adjusted gross income to be \$[REDACTED]. Petitioner's adjusted gross income subtracted by the \$784 excess shelter deduction results in a net income of \$[REDACTED]. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance based on the net income and group size. Based on Petitioner's net income and group size, Petitioner's FAP benefit issuance was \$456 at the time the January 6, 2021 Notice of Case Action was issued. Therefore, the Department properly determined Petitioner's FAP eligibility.

It should be noted that the FAP issuance amount for a group size of three with a net income of \$[REDACTED] has since increased to \$[REDACTED] per month. Petitioner should have received the full FAP benefit amount of \$616 for a group size of three in February and March 2021 due to the COVID-19 FAP supplements. Policy Exception Memorandum issued by the Economic Stability Administration (ESA) in response to the COVID-19 crisis number 2020-03, updated March 10, 2021. If Petitioner did not receive the full FAP benefit amount in February or March 2021, or if Petitioner's ongoing monthly FAP benefit amount does not increase to \$537 after the COVID-19 FAP supplements cease, she may submit a new request for hearing.

### **SER**

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

In this case, Petitioner submitted a request for hearing related to her SER benefit case. Petitioner stated that the SER issues have since been resolved. Petitioner testified that she no longer wished to proceed with the hearing related to her SER benefit case. The Request for Hearing with respect to the SER case was withdrawn.

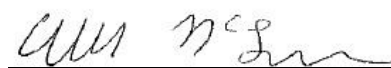
Pursuant to the withdrawal of the hearing request filed in this matter the request for hearing related to the SER benefit case is **DISMISSED**.

### **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 acted in accordance with Department policy when it determined Petitioner's FAP eligibility. Accordingly, the Department's decision is **AFFIRMED**.

Pursuant to the withdrawal of the hearing request filed in this matter the request for hearing related to the SER benefit case is **DISMISSED**.

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-19-Hearings  
BSC4-HearingDecsions  
M. Holden  
D. Sweeney  
T. Bair  
E. Holzhausen  
MOAHR

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

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