



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: May 18, 2022  
MOAHR Docket No.: 22-001681  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

### **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 May 11, 2022. The Petitioner was self-represented and had his wife, Gail Bryant, appear as a witness. The Department of Health and Human Services (Department) was represented by Brianna Evans, Eligibility Specialist, and Karina Little, Eligibility Specialist Supervisor.

### **ISSUE**

Did the Department properly calculate Petitioner's Food Assistance Program (FAP) benefit rate?

### **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 ██████████ 2022, the Department received Petitioner's application for State Emergency Relief (SER) which noted that Petitioner and his wife were both in the home.
3. Petitioner has Supplemental Security Income (SSI) of \$ ██████████ per month.
4. Petitioner's wife has Retirement Survivors Disability Insurance (RSDI) of \$ ██████████ per month.
5. Petitioner has rent of ██████████ per month which had previously been budgeted as ██████████ per month.

6. Petitioner is responsible for heat, electric, water, and his phone bill.
7. On [REDACTED] 2022, the Department issued a Notice of Case Action to Petitioner advising him that his FAP benefit rate was reduced to [REDACTED] per month after correcting his housing expense.
8. On April 12, 2022, the Department received Petitioner's request for hearing disputing the calculation of his FAP benefit rate.

### **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 disputes the Department's calculation of his FAP benefit rate. To determine whether the Department properly calculated Petitioner's FAP benefit rate, the evaluation first starts with consideration of all countable earned and unearned income available to the group. BEM 500 (April 2022), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (November 2021), p. 1. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 4-9. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Petitioner did not dispute that he receives a gross monthly SSI benefit of \$[REDACTED] and that his wife receives RSDI of \$[REDACTED]; since it is received monthly, there is no need to further standardize the income.

No other evidence was presented indicating that Petitioner had other sources of income. Therefore, Petitioner's total gross income is \$[REDACTED] and not \$[REDACTED] as calculated by the Department.

After consideration of income, the Department considers all appropriate deductions and expenses. Since Petitioner and his wife are recipients of SSI and RSDI, they are considered a Senior, Disabled, or disabled Veteran (SDV) and eligible for the following deductions to income:

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

BEM 550 (January 2022), pp. 1; BEM 554 (January 2022), p. 1; BEM 556 (October 2021), pp. 3-6.

Petitioner was provided the standard deduction of \$177.00 for a group size of one. RFT 255 (October 2021), p. 1; BEM 556, p. 4. No evidence was presented of a child support or dependent care expense. No medical expenses have been submitted to the Department for consideration in the FAP budget. As an SDV group, Petitioner is eligible for the Standard Medical Deduction (SMD). Per policy, an SDV group that has a verified one-time or ongoing medical expense(s) of more than \$35 for an SDV person(s) will receive the SMD. BEM 554, p. 9. The SMD is \$165.00. *Id.* If the group has actual medical expenses which are more than the SMD, they have the option to verify their actual expenses instead of receiving the SMD. *Id.* Without a verification of any medical expenses, the Department properly budgeted \$0.00 for the medical expense deduction.

After consideration of each of these deductions, Petitioner's Adjusted Gross Income (AGI) would be calculated by subtracting each item from his gross income. Petitioner's AGI is \$[REDACTED].

Once the AGI is calculated, the Department must then consider the Excess Shelter Deduction. BEM 554, p. 1; 7 CFR 273.9(d)(6). The Excess Shelter Deduction is calculated by adding Petitioner's housing costs to any of the applicable utility standard deductions and reducing this expense by half of Petitioner's AGI. BEM 556, pp. 4-7; 7 CFR 273.9(d)(6)(ii). The Department properly budgeted \$775.00 for Petitioner's housing costs which Petitioner does not dispute. Next, he would receive the heat and utility standard deduction (H/U) of \$559.00. RFT 255, p. 1. The H/U covers all heat and utility costs including cooling except actual utility expenses (repairs or maintenance). BEM 554, p. 16. When a client is not responsible for heating and/or cooling costs, the client may receive utility standard deductions for non-heat electric, water and/or sewer, telephone, cooking fuel, and trash as applicable. BEM 554, p. 22-25. The expenses and factors outlined here are the only expenses considered for purposes of calculating the FAP budget and determining eligibility. After each item is considered, Petitioner's total housing costs are added together and reduced by 50% of Petitioner's AGI to calculate an excess shelter cost. *Id.* Petitioner's excess shelter cost is \$428.00.

Next, Petitioner's excess shelter cost is subtracted from the AGI to determine his Net Income of \$[REDACTED]. *Id.* Finally, Petitioner's Net Income is compared against the Food Assistance Issuance Tables found in RFT 260 for a monthly FAP benefit rate of \$43.00. BEM 556, p. 6; RFT 260 (October 2021), p. 20. Therefore, the Department did not properly calculate Petitioner's FAP benefit rate.

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 benefit rate.


**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 benefit rate effective [REDACTED] 2022;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AM/ml

  
**Amanda M. T. Marler**  
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

**Electronic Mail Recipients:**

MDHHS-Wayne-76-Hearings  
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**First Class Mail Recipient:**

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