



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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████████████████████, MI ██████████

Date Mailed: October 21, 2022  
MOAHR Docket No.: 22-004183  
Agency No.: ██████████  
Petitioner: ██████████

**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 October 12, 2022, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Raven Douthard, Hearing Facilitator.

**ISSUE**

Did the Department properly process and calculate 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. Petitioner’s benefit certification period was scheduled to end effective July 31, 2022. In connection with a redetermination, Petitioner’s eligibility to receive FAP benefits was reviewed. Petitioner timely returned the redetermination and in response, the Department requested that she submit additional verifications. The Department closed Petitioner’s FAP case due to a failure to timely return requested verifications.
2. On or around ██████████, 2022, Petitioner requested a hearing to dispute the Department’s failure to properly process her redetermination and the subsequent closure of her FAP case. Petitioner’s hearing request was assigned MOAHR Docket No. 22 – 002946 and a hearing was held before Administrative Law Judge (ALJ) Linda Jordan on August 4, 2022. On August 5, 2022, ALJ Jordan issued a Hearing Decision finding that the Department did not act in accordance with policy

when it processed Petitioner's redetermination and terminated her FAP benefits. The Department was ordered to reinstate Petitioner's FAP case and begin recalculating her FAP budget effective July 26, 2022, ongoing; and if Petitioner was found to be eligible for FAP benefits, the Department was to issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not. The Department was also to notify Petitioner of its decision in writing. (See Hearing Decision for MOAHR Docket No. 22 – 002946)

3. In accordance with the Hearing Decision, the Department reinstated Petitioner's FAP case and recalculated her FAP budget for August 2022, ongoing, as she had received her full benefits for the month of July 2022. The Department determined that Petitioner was eligible for \$[REDACTED] in monthly benefits for the month of August 2022. The Department also determined that for September 2022, Petitioner was approved for a monthly ongoing benefit of \$[REDACTED]. (Exhibit A; Exhibit B)
4. Petitioner also received the correct amount of FAP supplements for the months of August 2022 and September 2022, to bring her benefit amount to the maximum for her group size. (Exhibit A; Exhibit B)
5. On or around [REDACTED], 2022, Petitioner requested a hearing disputing the Department's actions with respect to her FAP case and alleging that the Department failed to comply with the Hearing Decision issued by ALJ Jordan. Petitioner also disputed the amount of her recalculated FAP benefits. This hearing was assigned MOAHR Docket No. 22-003471 and scheduled to be held on September 8, 2022. Petitioner failed to appear for the hearing and an Order of Dismissal was issued.
6. On or around [REDACTED], 2022, Petitioner requested another hearing disputing the same actions taken by the Department's actions with respect to her FAP case. (Exhibit A, pp.3-4)

### **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 asserting that the Department failed to comply with the Hearing Decision issued by ALJ Jordan. Petitioner argued that she received only prorated amount of FAP benefits for the month of August 2022 and asserted that ALJ Jordan ordered the Department to recalculate her FAP benefits beginning July 26, 2022. Petitioner also disputed the amount of her recalculated FAP benefits for August 2022, ongoing.

According to BAM 600, the Department is to implement and certify a decision and order within ten calendar days of the mailing date on the hearing decision. BAM 600 (March 2021), pp. 41-44. When a hearing decision requires a case action different from the one originally proposed, a DHS-1843, Administrative Hearing Order Certification is sent with the decision and order. The Department is to complete the necessary case action and send the DHS-1843 to MOAHR to certify implementation and place a copy of the form in the case file. BAM 600, p. 41-44.

At the hearing, it was established that Petitioner's FAP certification period was set to expire on July 31, 2022, and that she received the full amount of her FAP benefits prior to the case closure due to the redetermination issue addressed during the hearing with ALJ Jordan. The Department explained that in accordance with the Hearing Decision issued by ALJ Jordan, it reinstated Petitioner's FAP case, and based on the date in which Petitioner submitted verification of income, which was, August 4, 2022, Petitioner was approved for prorated FAP benefits in the amount of \$[REDACTED] for the month of August 2022. A review of the case management system for the MOAHR shows that the Department timely completed the DHS-1843 in connection with the Hearing Decision. Petitioner disputed the Department's actions and testified that she should have received benefits beginning August 1, 2022, and argued that she missed out on FAP benefits from August 1, 2022 through August 4, 2022. However, the Department presented a Benefit Summary Inquiry showing that along with a [REDACTED] initial FAP benefit issuance paid to Petitioner on August 9, 2022, Petitioner received an additional \$[REDACTED] supplement on August 13, 2022, as well as a supplement of \$[REDACTED] on August 20, 2022. (Exhibit B).

Due to the COVID-19 pandemic, the federal government authorized the State of Michigan to issue Emergency Allotments (EA) to all FAP households, meaning that FAP households not receiving the maximum benefit for their group size would receive a supplement to bring their benefit amount to the maximum for their group size. ESA Memo 2020-15 (March 2020). The State of Michigan issued EA from April 2020 to September 2022. ESA Memo 2022-39 (January 2022). In addition, beginning in May 2021, MDHHS began issuing a minimum \$[REDACTED] supplement to all FAP households, including households that were already receiving the maximum allotment for their household size. ESA Memo 2021-22 (May 2021).

These supplements are identified on the Benefit Summary Inquiry presented for review and clearly show that Petitioner received the maximum amount of benefits for her group size of six. The Benefit Summary Inquiry further shows that Petitioner also continued to receive the maximum amount of FAP benefits based on her household size for the month of September 2022. Therefore, Petitioner did not suffer any loss of benefits as a

result of the Department's issuance of a prorated initial benefit of \$[REDACTED] beginning August 4, 2022. Additionally, while there was no evidence that the Department notified Petitioner of its decision in writing following the implementation of the Hearing Decision, Petitioner was informed of the action and the issuance of her FAP benefits by viewing her account online. Therefore, the Department's failure to notify Petitioner in writing of its decision is considered harmless error. |

Petitioner raised concerns with respect to the Department's calculation of her FAP benefits effective August 2022. The Department representative explained that on August 4, 2022, it received verification of Petitioner's income and recalculated her FAP eligibility. The Department presented a FAP EDG Net Income Results Budget which was thoroughly reviewed to determine if the Department properly calculated Petitioner's FAP benefits. (Exhibit A, pp. 15-16).

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 (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), pp. 1-2. 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. 5-6. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 7-8. Income received weekly is converted to a standard amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. BEM 505, pp. 7-9. An employee's wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. The Department counts gross wages in the calculation of earned income. BEM 501 (April 2022), pp. 6-7.

The Department determined that Petitioner had gross earned income in the amount of \$[REDACTED] which consisted of Petitioner's earnings from employment. The Department testified that it relied on information obtained from the pay stubs submitted, specifically considering weekly pay received on July 15, 2022, in the amount of \$[REDACTED] \$[REDACTED] paid on July 22, 2022, and \$[REDACTED] received by Petitioner on July 29, 2022. Petitioner confirmed that the income amounts relied upon by the Department were correct and asserted she submitted the July 29, 2022, paystub as verification of her decreased earnings. However, the evidence indicated that Petitioner's weekly pay on August 12, 2022, was \$[REDACTED] that she received \$[REDACTED] on August 19, 2022, and \$[REDACTED] on August 26, 2022, suggesting that the decreased earnings were only temporary. Upon review, and based on Petitioner's earnings from July 2022, the Department properly calculated and prospectively budgeted Petitioner's earned income of \$[REDACTED]

Child support is money paid by an absent parent(s) for the living expenses of children and is considered unearned income. Department policy provides that child support payments, including arrearage payments, received by a custodial party for an adult child

or a child no longer living in the home are the other unearned income of the payee as long as the money is not forwarded to the adult/child; if forwarded to the adult/child, enter as the other unearned income of the adult/child. BEM 503, pp.6-10. The total amount of court-ordered direct support (which is support an individual receives directly from the absent parent or the Michigan State Disbursement Unit (MiSDU)) is counted as unearned income and is considered in the calculation of a client's gross unearned income. When prospectively budgeting unearned income from child support, the Department is to use the average of child support payments received in the past three calendar months, unless changes are expected, excluding any unusual amounts or those not expected to continue. BEM 505 (November 2021), pp. 3-5.

The budget shows unearned income of \$[REDACTED] which the Department representative testified consisted of child support received by Petitioner. The Department identified the amounts of child support received by Petitioner for the months of May 2022 through September 2022. Upon review of the child support amounts identified by the Department during the hearing, the Department properly calculated the unearned income, as the three-month average of child support received is \$[REDACTED]

The deductions to income on the net income budget were also reviewed. BEM 550 (January 2022), pp. 1-2. Petitioner's FAP 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.
- An earned income deduction equal to 20% of any earned income.

BEM 554 (January 2022), p. 1; BEM 556 (October 2021), p. 1-8.

In this case, the Department properly applied an earned income deduction of \$[REDACTED] based on 20% of the total \$[REDACTED] earned income calculation. 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 \$[REDACTED] which was based on Petitioner's confirmed group size of six. RFT 255 (October 2021), p. 1. With respect to the excess shelter deduction of [REDACTED], the Department considered \$[REDACTED] as a housing expense, which Petitioner confirmed was correct for the month of August 2022. The Department also properly applied the \$[REDACTED] heat and utility (h/u) standard, which covers all heat and utility costs including cooling expenses. BEM 554, pp. 13-17. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. Thus, the Department properly calculated the excess shelter deduction.

After further review, the Department properly determined Petitioner's income and took into consideration the appropriate deductions to income including the \$[REDACTED] earned

income deduction, the \$[REDACTED] standard deduction, and the \$[REDACTED] excess shelter deduction to determine that Petitioner had net income of \$[REDACTED]. Based on net income of \$[REDACTED] Petitioner's six-person household is eligible for \$[REDACTED] in FAP benefits for the full month of August 2022. RFT 260 (October 2021), pp. 24. It is noted that the FAP budget shows an approval of monthly FAP benefits of [REDACTED] and when prorated for 28 days beginning August 4, 2022, Petitioner was approved for \$[REDACTED]. Upon review, the Department properly calculated the amount of Petitioner's FAP benefits for August 2022.

Petitioner also disputed the amount of her FAP benefits for the month of September 2022 in the amount of \$[REDACTED]. As referenced above, Petitioner received a supplement of \$[REDACTED] for the month of September 2022 to bring her FAP allotment to the maximum amount based on her group size. Nevertheless, the FAP budget for the month of September 2022 was reviewed. The Department explained that there were no changes to the FAP budget for the month of September 2022 with the exception of a decreased rental expense that was reported by Petitioner. Petitioner confirmed that effective September 2022, her rent decreased to \$[REDACTED]. Upon review and in light of [REDACTED] above referenced policies, considering Petitioner's decreased rental expense of \$[REDACTED] the excess shelter deduction reflected on the September 2022 budget would be \$[REDACTED].

After further review, the Department properly determined Petitioner's income and took into consideration the appropriate deductions to income including the \$[REDACTED] earned income deduction, the \$[REDACTED] standard deduction, and the \$[REDACTED] excess shelter deduction to determine that for the month of September 2022 Petitioner had net income of \$[REDACTED]. Based on net income of \$[REDACTED] Petitioner's six-person household is eligible for \$[REDACTED] in FAP benefits for the full month of September 2022.


While Petitioner also indicated she did not agree with the amount of her benefits for October 2022 in the amount of \$[REDACTED]. Petitioner is advised that because her FAP benefits for the month of October 2022 were not recalculated and certified until September 10, 2022, after the date in which she submitted her [REDACTED], 2022 request for hearing, she was required to submit a new hearing request in order to have her benefits for October 2022 reviewed. See BAM 600.

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 processed Petitioner's FAP benefits and calculated the amount of her FAP benefits for the month of August 2022 and September 2022.

**DECISION AND ORDER**

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

ZB/ml

  
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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 Electronic Mail :**

**DHHS**  
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**Interested Parties**

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M. Holden  
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MOAHR

**Via First Class Mail :**

**Petitioner**

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