



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 25, 2022  
MOAHR Docket No.: 22-004374  
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 19, 2022, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Valarie 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. On or around ██████████, 2022, Petitioner submitted an application requesting FAP benefits.
2. On the application, Petitioner reported that his household size is one, that he has self-employment income from contract work of \$████████ before expenses and that he was monthly expenses of ██████████. On the application, Petitioner reported that he is responsible for housing expenses consisting of a monthly mortgage of \$████████, annual home insurance of \$████████ and annual property taxes of ██████████. (Exhibit A, pp.4-10)
3. In connection with the application, Petitioner submitted a 2021 Michigan Individual Income Tax Return MI-1040 showing that his adjusted gross income was ██████████.

The Schedule W 2021 Michigan Withholding Tax Schedule submitted shows that Petitioner was employed and for that tax period, had wages from employment with [REDACTED] in the amount of [REDACTED].

4. Petitioner was approved for [REDACTED] in ongoing monthly FAP benefits. Petitioner also received the correct amount of FAP supplements for the months of June 2022, ongoing, to bring his benefit amount to the maximum for his group size.
5. On or around [REDACTED], 2022, Petitioner requested a hearing disputing the amount of his FAP benefits.

### **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 Department's calculation of his FAP benefits in the amount of \$[REDACTED]. At the hearing, the Department representative testified that after processing Petitioner's [REDACTED] 2022, FAP application, it determined that he was eligible for \$[REDACTED] in FAP benefits monthly and that this amount has remained unchanged since July 2022. The Department also established that since that time, Petitioner has received FAP supplements to bring his benefit amount to the maximum amount based on his group size of one in accordance with ESA Memo 2022-39 (January 2022) and ESA Memo 2021-22 (May 2021).

The Department presented a FAP EDG Net Income Results Budget for the month of July 2022, which was thoroughly reviewed to determine if the Department properly calculated the amount of Petitioner's FAP benefits. As indicated above, the Department asserted that Petitioner's FAP budget has remained unchanged. (Exhibit B).

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 (October 2017), 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. 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 (January 2020), pp. 6-7.

The Department considers the income a client receives from an LLC as wages, even if the client is the owner. Wages are the pay an employee receives from another individual organization or S-Corp/LLC. Wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. BEM 501 (April 2022), p. 5-6. Acceptable verification sources for wages are outlined in BEM 501. Individuals who run their own businesses are self-employed. This includes but is not limited to selling goods and providing direct services. However, LLCs are not self-employment. BEM 502 (October 2019), pp. 1-2. Acceptable verification sources for self-employment income are outlined in BEM 502.

During the hearing, the Department asserted that Petitioner's FAP eligibility was improperly determined because the Department failed to include any of Petitioner's earned income. The Department representative testified that although there was no earned income reflected on the budget, Petitioner had earnings based on the 2021 Michigan Individual Income Tax Return MI-1040 submitted and that these earnings should have been included in the calculation of his FAP eligibility. Petitioner testified that the 2021 Michigan Individual Income Tax Return MI-1040 is not reflective of his current income, as he has not been employed with [REDACTED] since 2021. The Department asserted that Petitioner submitted Self-Employment Income and Expense statements for various months, however, none were presented for review. Petitioner testified that although he is the owner of an LLC that sells protein bars, he has not received wages from the LLC yet. Based on the testimony of both Petitioner and the Department's representative during the hearing, the Department failed to properly consider Petitioner's current earned income, if any.

The budget shows unearned income of [REDACTED] which the Department representative testified consisted of unemployment compensation benefits (UCB) received by Petitioner. For unearned income from UCB, the Department will count the gross amount and convert it to a standard monthly amount. BEM 503 (January 2020), pp. 36-37; BEM 505. 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 converted to a standard monthly amount by multiplying the average of the weekly pay amounts by the 4.3 multiplier. BEM 505, pp. 7-9. The Department testified that Petitioner received UCB in June 2022 and July 2022 and that specifically, Petitioner received [REDACTED] on June 4, 2022, [REDACTED] on June 18, 2022, \$[REDACTED] on July 2, 2022, and [REDACTED] on July 16, 2022. While, when prospectively budgeted, the amounts considered for Petitioner's unearned income from UCB would be \$[REDACTED] the Department testified, and Petitioner confirmed that he has not received

any UCB since July 2022. Thus, while it was unknown whether Petitioner reported this loss of unearned income to the Department, it was established that it should no longer be considered in the FAP budget as Petitioner is not currently receiving UCB. Thus, the Department failed to establish that it properly calculated Petitioner's unearned income.

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, there was no earned income on the budget and thus, there was no applicable earned income deduction. 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 one. 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 the correct amount for his mortgage. Petitioner also testified that he was responsible for home insurance of about \$[REDACTED] annually and property taxes of \$[REDACTED] annually. The Department testified that these were not taken into consideration because Petitioner had an escrow for his taxes and insurance with his mortgage payment. Petitioner disputed the Department's assertion and testified that the amount identified on the mortgage for the escrow was not for taxes and home insurance but rather for a mortgage insurance. Although the Department properly applied the [REDACTED] heat and utility (h/u) standard, which covers all heat and utility costs including cooling expenses, the evidence was unclear as to whether Petitioner has a responsibility for additional home insurance and property taxes that were not considered by the Department as there were no documents presented in support of the Department's excess shelter deduction calculation. BEM 554, pp. 13-17. Thus, the Department failed to establish that it properly calculated the excess shelter deduction.

Upon review, because of the errors identified above, the Department did not act in accordance with Department policy when it determined that Petitioner was eligible for FAP benefits of \$[REDACTED] monthly. Because as referenced above, Petitioner has continued to receive FAP supplements to bring his benefit amount to the maximum amount based on his group size of one, the Department will be ordered to recalculate Petitioner's FAP budget beginning October 2022, 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 October 1, 2022, ongoing;
2. Issue FAP supplements to Petitioner for any benefits he was eligible to receive but did not from October 1, 2022, ongoing, in accordance with Department policy; and
3. Notify Petitioner in writing of its decision.



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**Zainab A. Baydoun**  
Administrative Law Judge

ZB/tm

**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**  
M. Holden  
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**Via-First Class Mail :**

**Petitioner**  
[REDACTED]  
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