



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], MI [REDACTED]

Date Mailed: January 18, 2023  
MOAHR Docket No.: 22-005714  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Linda Jordan**

### **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 hearing was held on January 9, 2023 via teleconference. Petitioner appeared and represented herself. Tatirah Glenn, Eligibility Specialist, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

### **ISSUES**

1. Did MDHHS properly calculate Petitioner's Food Assistance Program (FAP) benefit rate?
2. Did MDHHS properly cancel Petitioner's State SSI Payment (SSP)?

### **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.
2. On August 20, 2022, MDHHS sent Petitioner a Notice of State SSI Payment (SSP) change, which indicated that her SSP payment had been cancelled because MDHHS received information from the Social Security Administration (SSA) that Petitioner had not received a regular first of the month payment for three months (Exhibit A, p. 7).
3. Effective December 1, 2022, MDHHS determined that Petitioner's monthly FAP benefit rate was \$ [REDACTED] per month (Exhibit A, p. 19).

4. On December 8, 2022, Petitioner filed a Request for Hearing to dispute the amount of her FAP benefits and cancellation of her SSP 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)**

FAP 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. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

Petitioner filed a Request for Hearing to challenge the computation of her FAP benefit rate. MDHHS determined that Petitioner was entitled to \$██████ per month, effective December 1, 2022.

To determine whether MDHHS properly calculated Petitioner's FAP benefit amount, all countable earned and unearned income available to the client must be considered. BEM 500 (July 2020), pp. 1-5. MDHHS 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. MDHHS is required to prospect income using the best estimate of income expected to be received during the month and should seek input from the client to establish the estimate, whenever possible. BEM 505, p. 3. For Supplemental Security Income (SSI), MDHHS counts the gross benefit amount as unearned income. BEM 503 (April 2021), p. 35. Amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income and are excluded. BEM 500 (April 2022), pp. 6-7. For SSI, there is an exception to this rule if the overpayment was caused by an Intentional Program Violation (IPV). If the overpayment is due to an IPV, then the amounts recouped must be included in the gross income calculation. *Id.*

In this case, MDHHS budgeted \$██████ for Petitioner's monthly unearned income. However, it also introduced evidence that Petitioner's SSI payment was reduced due to an overpayment (Exhibit A, p. 14). The record shows that Petitioner's monthly gross SSI payment was \$██████ (Exhibit A, p. 14). There was no evidence that Petitioner's SSI overpayment was the result of an IPV. Therefore, the amount recouped for the SSI overpayment should have been excluded from Petitioner's unearned income calculation. It is unclear from the record why MDHHS determined that Petitioner was receiving \$██████ in monthly unearned income when this amount differs from what Petitioner was actually receiving in SSI.

Therefore, 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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FAP benefit amount.

**The State SSI Payment (SSP)**

The SSP program is established by 20 CFR 416.2001-.2099 and the Social Security Act, 42 USC 1382e. MDHHS administers the program pursuant to MCL 400.10. Supplemental Security Income (SSI) is a means-tested benefit administered by the Social Security Administration (SSA) that can be received based on age, disability, or blindness. BEM 503 (April 2021), p. 35.

In Michigan, SSI benefits include a basic federal benefit and an additional amount paid with state funds, known as SSP. BEM 660 (October 2021), p. 1. MDHHS issues SSP to SSI recipients in independent living situations or living in the household of another. *Id.* Payments are made only for months in which the recipient received a regular first of the month federal SSI benefit. *Id.* SSPs are not issued for retroactive or supplemental benefits. Payment levels for SSI and SSP benefits are set forth in RFT 248. When an SSI recipient experiences a reduction in benefits, MDHHS must send the DHS-430 Notice of State SSI Payment Change, which gives recipients timely notice of any proposed benefit reduction, their hearing rights, and the date they will receive their next quarterly check. BEM 660., p. 3.

In this case, Petitioner requested a hearing to dispute the cancellation of her SSP. MDHHS testified that it cancelled Petitioner's SSP because it received information from SSA that Petitioner's SSI payment had been reduced. Petitioner testified that her SSI payment was temporarily reduced due to an overpayment. MDHHS argued that it could not issue SSP because the payment that she received was not her "regular" first of the month payment. However, the record shows that Petitioner was receiving a recurring SSI payment dated the first of the month, albeit less than what she had received in the past. MDHHS failed to present any authority to justify the cancellation of SSP based on a reduced SSI payment.

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 MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it cancelled Petitioner's SSP.

**DECISION AND ORDER**

Accordingly, MDHHS' decisions are **REVERSED**.

MDHHS 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 December 1, 2022, excluding the SSI overpayment from the unearned income calculation unless it has reliable evidence that the overpayment was caused by an IPV;
2. Issue supplements to Petitioner for any FAP benefits that she was eligible to receive but did not from December 1, 2022 ongoing;
3. Reinstate Petitioner's SSP benefits, effective August 20, 2022 ongoing;
4. Issue supplements to Petitioner for any SSP benefits that she was eligible to receive but did not, from August 20, 2022 ongoing; and
5. Notify Petitioner of its decisions in writing.

LJ/tm



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**Linda Jordan**  
Administrative Law Judge

