



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: April 5, 2023  
MOAHR Docket No.: 23-001100  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 March 29, 2023, 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. Salwa Abdallah served as Arabic interpreter.

### **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. Petitioner is an ongoing recipient of FAP benefits.
2. On or around September 26, 2022, Petitioner submitted a redetermination Department for his FAP case.
  - a. On the redetermination, Petitioner reported that his household consists of six people, that he is employed and earns income biweekly, and that he no longer has unearned income in the amount of \$ [REDACTED] monthly. (Exhibit A, pp. 6-10)
  - b. At the hearing, Petitioner confirmed that his 21-year-old daughter is a full-time student and is not employed. There was no evidence that Petitioner's

daughter met the student status criteria, and was thus, properly removed as a FAP group member.

3. Petitioner was approved for monthly FAP benefits in the amount of \$366.
4. On or around February 27, 2023, Petitioner requested a hearing disputing the amount of his FAP benefits. Petitioner specifically identified four amounts of FAP benefits that he did not agree with: \$197, \$287, \$165, and \$366.

### **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 disputed the Department's calculation of his FAP benefits. On his request for hearing, and at the hearing, Petitioner clarified that he disputed the benefits that he received monthly in the amounts of \$197, \$287, \$165, and \$366. The Department representative present for the hearing reviewed the eligibility summary and other information in Petitioner's case through Bridges and testified that Petitioner received \$197 for the months of January 2022 and February 2022, \$287 for the months of April 2022 through September 2022, \$165 for the month of October 2022, and since November 2022, Petitioner has been approved for FAP benefits in the amount of \$366 monthly.

BAM 600 provides that a request for hearing must be received in the Department local office within 90 days of the date of the written notice of case action. The Michigan Office of Administrative Hearings and Rules (MOAHR) may grant a hearing about a denial of an application and/or supplemental payments; reduction in the amount of program benefits or service; suspension or termination of program benefits or service; restrictions under which benefits or services are provided; delay of any action beyond the standards of promptness; and for FAP and CDC, the current level of benefits. BAM 600 (March 2021), pp. 4-6. Although Petitioner asserted that he requested a hearing in January 2023 to dispute the amounts of his FAP benefits identified above, Petitioner confirmed that he submitted a withdrawal of his hearing request. Upon review, although Petitioner is entitled to a hearing regarding the current amount of his FAP benefits,

Petitioner's February 27, 2023, hearing request is untimely with respect to the amount of his FAP benefits prior to February 2023.

Additionally, the Department testified, and Petitioner confirmed that his household received a supplement of FAP benefits each month, along with his approved ongoing monthly benefit from January 2022 through January 2023, to bring the household benefit amount to the maximum based on his group size in accordance with the Emergency Allotments authorized by the federal government and issued in response to the COVID-19 pandemic. Therefore, despite the fluctuations in the ongoing monthly allotment, Petitioner did not present any evidence that he suffered any loss of benefits for the time period between January 2022 and January 2023. Therefore, the undersigned Administrative Law Judge does not have the authority to address the amount of Petitioner's FAP benefits from January 2022 through January 2023 as requested in Petitioner's request for hearing.

The amount of Petitioner's FAP benefits for February 2023 is addressed below. 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. 16-17)

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 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. 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 earning statements submitted by Petitioner at the time of the September 2022 redetermination, specifically considering pay received on August 19, 2022, in the amount of \$[REDACTED] and pay received on September 16, 2022, in the amount of \$[REDACTED]. The Department representative testified that Petitioner's \$[REDACTED] paycheck from September 2, 2022, was excluded as it was unusual. There was no dispute that the income amounts relied upon by the Department at the time the budget was completed were accurate. Upon review, and based on the

above referenced policy, the Department properly calculated and prospectively budgeted Petitioner's earned income of \$ [REDACTED]

The budget shows that the Department also considered unearned income in the amount of \$ [REDACTED] which after some testimony, was indicated to be other rental income. See BEM 504 (October 2019), pp. 1-6. Petitioner testified that he is no longer receiving this monthly income, as his son is no longer paying him any monthly rent. Petitioner testified that it has been about one year since he has received \$ [REDACTED] and asserted that on the redetermination he submitted, he reported that he is no longer receiving the \$ [REDACTED] monthly. Petitioner asserted that he also submitted a letter to the Department as verification that he is no longer receiving the income. It was unclear when the document was submitted, however, a review of the redetermination shows that Petitioner reported the change in September 2022. Based on the evidence presented, the Department failed to establish that Petitioner continued to receive \$ [REDACTED] and unearned income from other rental 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, the Department properly applied an earned income deduction of \$306, 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. Although Petitioner's 21-year-old daughter lives in the household, the Department testified that she was an ineligible student and therefore, removed from the FAP group. Petitioner did not present any evidence that his daughter met the student status criteria. Thus, the Department properly applied a standard deduction of \$225 which was based on Petitioner's eligible group size of five. RFT 255 (October 2022), p. 1. With respect to the excess shelter deduction, the Department considered Petitioner's responsibility for property taxes in the annual amount of \$2,576.16, and annual home insurance of \$950. The Department testified that when taken monthly, a housing expense for property taxes and home insurance of \$293.85 monthly was considered. The Department also properly applied the \$620 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. Upon review, the Department properly calculated the excess shelter deduction. RFT 255.

After further review, although the Department properly determined Petitioner's earned income and took into consideration the appropriate deductions to income, because the Department failed to establish that the unearned income was properly calculated, 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 benefits of \$366 for the month of February 2023.


**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 February 1, 2023, ongoing;
2. Issue FAP supplements to Petitioner for any benefits he was eligible to receive but did not, if any, from February 1, 2023, ongoing, in accordance with Department policy; and
3. Notify Petitioner in writing of its decision.

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**

BSC4  
M Holden  
D Sweeney  
MOAHR

**Via First Class Mail :**

**Petitioner**

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