



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR



Date Mailed: December 5, 2022  
MOAHR Docket No.: 22-005074  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**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 December 1, 2022. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearings Facilitator.

### **ISSUE**

Did the Department properly calculate Petitioner's FAP benefits rate?

Did the Department properly issue COVID-19 related supplements to Petitioner for August 2022?

### **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 July 29, 2022, the Department received Petitioner's Mid-Certification Contact Notice which noted no changes in her circumstances.
2. Petitioner receives \$[REDACTED] per month in Retirement Survivors Disability Insurance (RSDI) benefits, has property taxes of \$108.33 per month, is responsible for all utilities, does not have any child support expenses, has not submitted any medical expenses for inclusion in her FAP budget, and has a group size of one.
3. On October 21, 2022, the Department processed Petitioner's Mid-Certification Contact Notice and issued a Notice of Case Action to Petitioner informing her that for August and September 2022 her FAP benefit rate would be \$20.00 per month

and for October 2022 through July 2023, her FAP benefit rate would be \$23.00 per month.

4. On November 12, 2022, the Department issued the following supplements: for September 2022, \$230.00; for October 2022, \$258.00; and for November 2022, \$258.00. No supplement was issued for September 2022.
5. On October 31, 2022, the Department received Petitioner's request for hearing disputing the calculation of her FAP benefit rate and supplements.

### **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 her FAP benefit rate and its issuance of FAP supplements for August 2022. 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 receives a gross monthly RSDI payment of \$[REDACTED]; therefore, there is no need to further standardize her income. No other evidence was presented indicating that Petitioner had other sources of income. Therefore, Petitioner's total gross income is \$[REDACTED].

After consideration of income, the Department considers all appropriate deductions and expenses. Petitioner is disabled and therefore, she is 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.

The Department properly budgeted the standard deduction of \$177.00 for August and September 2022 and \$193.00 for October 2022, ongoing. RFT 255 (October 2021 and 2022), p. 1; BEM 556, p. 4. No evidence was presented that Petitioner has dependent care or child support expenses. In addition, no evidence was presented of any verified medical expenses. 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 Standard Medical Deduction (SMD). The SMD is \$165. 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.” BEM 554, p. 9.

After consideration of each of these deductions, Petitioner’s Adjusted Gross Income (AGI) would be calculated by subtracting each item from the gross income for a total of \$ [REDACTED] for August and September 2022 and \$ [REDACTED] for October 2022, ongoing.

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 standard deductions and reducing this expense by half of Petitioner’s AGI. BEM 556, pp. 4-7; 7 CFR 273.9(d)(6)(ii). Petitioner is responsible for property taxes of \$108.33 per month in addition to all utilities. The heat and utility standard deduction (H/U) of \$559.00 for August and September 2022 and \$620.00 for October 2022, ongoing, 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 cost is added together (\$668.00 for August and September 2022, \$729.00 for October 2022, ongoing, rounded up to the nearest dollar for both) and reduced by 50% of Petitioner’s AGI (\$555.00 for August and September 2022, \$547.00 for October 2022, ongoing, rounded down to the nearest dollar for both) resulting in an excess shelter cost of \$113.00 for August and September 2022 and \$182.00 for October 2022, ongoing. *Id.*

Next, Petitioner’s excess shelter cost is deducted from her AGI to equal her Net Income of \$ [REDACTED] for August and September 2022 and \$ [REDACTED] for October 2022, ongoing. *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 \$20.00 for August and September 2022 and \$23.00 for October 2022, ongoing. BEM 556, p. 6; RFT 260 (October 2021 and 2022), pp. 13-14.

Petitioner also disputed the Department's issuance of COVID-19 related FAP supplements. Per ESA Memo 2022-43, Michigan was approved to issue emergency allotment benefits to FAP clients through October 2022. For FAP groups not receiving the maximum benefit rate for their group size, the supplement is issued to bring their benefit amount up to the maximum amount allowed for their group size. Effective October 2021, the maximum benefit rate for a group size of one was \$250.00. Effective October 2022, the maximum benefit rate for a group size of one is \$281.000. Petitioner did not receive a supplement for August 2022 and instead only received her \$20.00 regular benefit. On November 12, 2022, the Department issued the following supplements: for September 2022, \$230.00; for October 2022, \$258.00; and for November 2022, \$258.00. In each of these months, Petitioner also received her regular benefit. Therefore, for September, October, and November 2022, Petitioner was issued her regular benefit and supplement bringing her to the maximum benefit rate for each month. Since the Department failed to issue a supplement for August 2022 despite her eligibility, the Department did not act in accordance with policy.

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 calculated Petitioner's FAP benefit rate for August 2022, ongoing but did not act in accordance with Department policy when it failed to issue a FAP Emergency Allotment (EA) supplement for August 2022.

### **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. Issue a FAP EA supplement to Petitioner for August 2022 in accordance with Department policy.

AMTM/cc



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**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

**Via-Electronic Mail :**

**Interested Parties**

MDHHS-Wayne-19-Hearings  
BSC4-HearingDecisions  
D. Sweeney  
M. Holden  
MOAHR

**Via-First Class Mail :**

**Petitioner**

[REDACTED]  
[REDACTED]  
[REDACTED] MI [REDACTED]