



GRETCHEN WHITMER  
GOVERNOR

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

MARLON I. BROWN, DPA  
ACTING DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: October 17, 2023  
MOAHR Docket No.: 23-005533  
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 October 12, 2023. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Belinda Shamily, Eligibility Specialist.

### **ISSUE**

Did the Department properly determine Petitioner's Food Assistance Program (FAP) eligibility?

### **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 [REDACTED] 2023, the Department received Petitioner's application for FAP and Medical Assistance (MA) Program benefits which listed her daughter [REDACTED] as a household member in addition to two other children.
2. On [REDACTED] 2023, the Department and Petitioner completed an application interview. The parties dispute the details of the conversation relating to where [REDACTED] resides, with Petitioner or with Petitioner's mother.
3. The Department has not received any proof showing that Petitioner is not the payee of [REDACTED]'s Retirement Survivors Disability Insurance (RSDI) benefit in the amount of \$ [REDACTED].00 per month.
4. Petitioner receives child support payments for her other two children. The payment history is as follows:

June 2023	\$ [REDACTED]	\$ [REDACTED]
July 2023	\$ [REDACTED]	\$ [REDACTED]
August 2023	\$ [REDACTED]	\$ [REDACTED]

5. Petitioner receives a gross Supplemental Security Income (SSI) in the amount of \$ [REDACTED] per month.
6. On August 22, 2023, the Department issued a Notice of Case Action to Petitioner advising her that she was eligible for \$30.00 for the remaining days of July 2023 for a group size of three, \$188.00 for August for a group size of three, and \$260.00 for a group size of four for September 2023 through June 2024. Petitioner's child [REDACTED] was not included in the group in July or August 2023. Each month's benefit was based upon \$ [REDACTED] in unearned income, \$193.00 standard deduction, \$1,500 in housing costs, and \$624.00 for the heat and utility standard deduction (H/U).
7. On September 8, 2023, the Department received Petitioner's request for hearing disputing the calculation of 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 disputes the Department's calculation of her FAP benefit rate. 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 group is determined by who lives together, the relationships of those living together, whether they purchase and prepare food together, and other unique living arrangements. BEM 212 (January 2022), p. 1. Parents and their children under 22 years of age who live together must be in the same group. *Id.* Petitioner argues that [REDACTED] is not living in her household and should not be in her group. However, Petitioner included [REDACTED] on the application and did not provide any evidence showing that she was not in the home after her interview with the Department. Therefore, [REDACTED] is included in the group.

Neither party disputed [REDACTED]'s exclusion from the group for July and August 2023, as a result, it is not discussed here.

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 2022), 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's SSI (\$ [REDACTED]) and [REDACTED]'s RSDI (\$ [REDACTED]) are received monthly; therefore, there is no further need to standardize the income. Child support income must use the average of the past three calendar months unless changes are expected (\$ [REDACTED] for one child and \$ [REDACTED] for the other). BEM 505, p. 4. Therefore, the total gross monthly income is \$ [REDACTED].

After consideration of income, the Department considers all appropriate deductions and expenses. Petitioner and [REDACTED] receive disability benefits. Therefore, the group is eligible for the following deductions to income:

- Medical expense deduction.
- Dependent care expense.
- Excess shelter deduction.
- Court ordered child support and arrearages paid to non-household members.
- Standard deduction based on group size.

BEM 550 (April 2023), pp. 1; BEM 554 (April 2023), p. 1; BEM 556 (January 2023), pp. - 6.

The Department properly budgeted the standard deduction of \$193.00. RFT 255 (February 2023), p. 1; BEM 556, p. 4. No evidence was presented that Petitioner has a child support or dependent care expense and the Department properly budgeted \$0.00 for these items. Next, Petitioner and Keijuanna are SDV group members, but 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 SMD. BEM 554, p. 9. The SMD is \$165. *Id.* 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. *Id.* In addition, groups that do not have a 24-month benefit period may choose to budget a one-time-only expense for one month or average it over the balance of the benefit period. BEM 554, p. 9. Groups with a 24-month benefit period are given the option to budget the expense for one month, average it over the remainder of the first 12 months of the benefit period, or average it over the remainder of the 24-month benefit period. BEM 554, p. 10. After consideration of all of these expenses, the Adjusted Gross Income (AGI) is calculated by subtracting each item from the gross income totaling \$ [REDACTED].

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 housing costs of \$1,500.00 per month in addition to all utilities. The heat and utility standard deduction (H/U) of \$624.00 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 (\$2,124.00) and reduced by 50% of Petitioner's AGI (\$ [REDACTED]) resulting in an excess shelter cost of \$679.00. *Id.*

Next, Petitioner's excess shelter cost is deducted from her AGI to equal her Net Income of \$ [REDACTED]. *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 \$271.00. BEM 556, p. 6; RFT 260 (October 2022), p. 31. The Department did not properly calculate Petitioner's FAP benefit rate effective September 2023. After making adjustments for the removal of [REDACTED]'s child support income and removal from the group, the benefit rate for July 2023 (before being prorated) and August 2023 is \$204.00. Again, the Department did not properly calculate Petitioner's FAP benefit rate. It is noted that if [REDACTED] is removed from the group, the benefit rates calculated by this decision are no longer accurate.

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 rate.

### **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. Redetermine Petitioner's FAP benefit rate effective July 27, 2023, ongoing;
2. If otherwise eligible, issue supplements for benefits not previously received; and,

3. Notify Petitioner in writing of its decision.



AM/mp

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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-15-Greydale-Hearings  
D. Sweeney  
M. Holden  
MOAHR  
BSC2

**Via-First Class Mail :**

