



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
SUZANNE SONNEBORN  
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA  
DIRECTOR



Date Mailed: September 9, 2024  
MOAHR Docket No.: 24-008868  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner**

### **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 by telephone on September 3, 2024. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Rosemary Molsbee-Smith, Eligibility Specialist.

### **ISSUE**

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit effective July 1, 2024?

### **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 for a household of one.
2. Petitioner pays rent in the amount of \$461 per month and is responsible for paying for his air conditioning and telephone.
3. On July 15, 2023, Petitioner was issued a Low-Income Home Energy Assistance Payment (LIHEAP) payment of \$20.01. (Exhibit A, p. 15).
4. On May 14, 2024, the Department received a completed Mid-Certification Contact Notice (Mid-Certification) from Petitioner that was due May 21, 2024. (Exhibit A, pp. 8 – 10).

5. On July 15, 2024, the Department processed Petitioner's Mid-Certification. (Exhibit A, p. 45).
6. On July 15, 2024, the Department sent Petitioner a Notice of Case Action (NOCA) that approved Petitioner for FAP benefits in the decreased amount of \$23 for July 2024 and then \$89 per month for August 2024 ongoing. (Exhibit A, pp. 23 – 29).
7. On July 23, 2024, the Department sent Petitioner a NOCA that approved Petitioner for FAP benefits in the decreased amount of \$23 for September 2024 ongoing. (Exhibit A, pp. 34 – 40).
8. On July 29, 2024, the Department received a request for hearing from Petitioner, disputing the amount of his FAP benefits. (Exhibit A, pp. 4 – 6).

### **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.

Petitioner requested a hearing to dispute the reduction in his monthly FAP benefit amount. The Department reduced Petitioner's monthly FAP benefit as a result of a change in Petitioner's excess shelter deduction calculation. The calculation of Petitioner's excess shelter deduction was the only deduction in dispute at the hearing.

To determine Petitioner's FAP benefit amount, the Department must determine Petitioner's income and which specific and limited deductions from his income, if any, are available to Petitioner, including any excess shelter deduction. BEM 554 (February 2024), p. 1; BEM 556 (May 2024), p. 5.

A client's eligibility for an excess shelter deduction requires considering what utilities, if any, the client is responsible to pay and whether the client has received certain utility assistance payments during the current or past 12 months. A client who is responsible to pay for heat, or cooling if they are responsible to pay non-heat electric, is eligible for a heat/utility (h/u) standard of \$680 in the excess shelter deduction calculation. BEM 554 (February 2024), pp. 16 – 18; RFT 255 (October 2023). At redetermination, a client whose heat is included in their rent, but who has received a LIHEAP or home heating credit (HHC) of more than \$20 in the certification month or in any of the 12 months

immediately before the certification month is also eligible for the h/u standard. BEM 554, pp. 20 – 21. The h/u standard is the most favorable utility standard available to a client, and clients who receive the h/u standard do not receive any other individual utility standards. BEM 554, pp. 16 – 17.

In this case, the Department timely received a completed Mid-Certification Contact Notice from Petitioner on May 14, 2024. (Exhibit A, pp. 8 – 10). The evidence established that the Department did not process Petitioner's Mid-Certification until July 15, 2024. (Exhibit A, p. 41, Line 45). As a result of its processing of Petitioner's Mid-Certification Contact Notice, and different calculations of Petitioner's excess shelter deduction, the Department issued two NOCAs to Petitioner approving him for different amounts of FAP benefits. (Exhibit A, pp. 23 – 24, 24 – 35). At the hearing, Petitioner confirmed that he has a housing expense of \$461 per month and testified that he has utility expenses for air conditioning and telephone. The Department's evidence established that Petitioner received a payment of \$20.01 LIHEAP on July 15, 2023. (Exhibit A, p. 15).

Because Petitioner was an ongoing FAP recipient and his eligibility was being redetermined for a certification period commencing July 1, 2024, policy required the Department to utilize the \$20.01 LIHEAP Petitioner received on July 15, 2023 to grant him the h/u standard because the LIHEAP was in excess of \$20 and received by Petitioner within the 12 months immediately before the certification month of July 2024. BEM 554, p. 20. During the hearing, the Department acknowledged that Petitioner's excess shelter deduction was calculated incorrectly and that the error impacted the Department's determinations of Petitioner's FAP benefit amount. Therefore, the Department did not act in accordance with policy when it failed to budget the full h/u standard of \$680 when it calculated Petitioner's excess shelter deduction.

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 determined Petitioner's excess shelter deduction and FAP benefit amount for July 2024 ongoing.

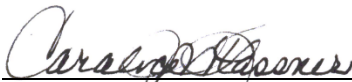
**DECISION AND ORDER**

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. Redetermine Petitioner's excess shelter deduction and FAP benefit amount based on his receipt of the LIHEAP payment within the 12 months immediately before the certification month of July 2024;
2. If Petitioner is eligible for any supplemental FAP benefits, issue supplemental payments to Petitioner for any FAP benefits he was eligible to receive but did not, for July 1, 2024 ongoing; and
3. Notify Petitioner of its decision in writing.

CML/nr

  
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**Caralyce M. Lassner**  
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**

Yvonne Hill

Oakland County DHHS Madison Heights Dist.

30755 Montpelier Drive

Madison Heights, MI 48071

MDHHS-Oakland-DistrictII-Hearings@michigan.gov

## Interested Parties

BSC4

M. Holden

N. Denson-Sogbaka

B. Cabanaw

MOAHR

**Via-First Class Mail :**

**Petitioner**

MI