



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

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

Date Mailed: January 2, 2025  
MOAHR Docket No.: 24-013136  
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 December 26, 2024. Petitioner was represented by their Authorized Hearing Representative (AHR), [REDACTED] [REDACTED]. The Department of Health and Human Services (Department) was represented by Dequindre Williamson, Assistance Payments Supervisor.

The Department's 13-page hearing packet was admitted into evidence as Exhibit A.

### **ISSUE**

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

Did the Department properly process Petitioner's FAP food replacement affidavit of September 5, 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. On August 20, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received a hearing packet from the Department that included a request for hearing from Petitioner's AHR disputing the Department's failure to process a) an [REDACTED] [REDACTED] 2024 application, and b) a July 3, 2024 change report, among other things. The hearing was assigned MOAHR Case No. 24-009283.

2. On September 5, 2024, the Department received a food replacement affidavit from Petitioner for food lost due to an electrical outage between August 27, 2024 and August 30, 2024. (Exhibit A, p. 1).
3. On October 2, 2024 and October 3, 2024, the Department received a completed Semi-Annual Contact Report (SACR) from Petitioner. The SACR was originally due to the Department on August 19, 2024, for the benefit period beginning October 1, 2024.
4. On October 3, 2024, a hearing was held in MOAHR Case No. 24-009283 by the undersigned Administrative Law Judge (ALJ), and Petitioner's AHR requested to withdraw the request for hearing and stated the issues were resolved. An order of dismissal was issued in that case on October 8, 2024.
5. On October 3, 2024, the Department sent a Petitioner a Notice of Case Action (NOCA) that approved Petitioner for FAP benefits for August 2024 in the amount of \$414, September 2024 in the amount of \$414, and October 2024 in the amount of \$429. The Department issued the August and September FAP benefits the same day as the NOCA. The deadline for Petitioner to appeal the Department's October 3, 2024 NOCA is January 4, 2025.
6. On October 28, 2024, the Department issued a NOCA to Petitioner that approved Petitioner for FAP benefits of \$536 per month for a two-person FAP group, effective November 1, 2024 ongoing. The deadline for Petitioner to appeal the Department's October 28, 2024 NOCA is January 26, 2025. (Exhibit A, pp. 9 – 13).
7. On November 7, 2024, the Department issued a benefit notice (BN) to Petitioner that approved him for replacement food benefits in the amount of \$414 for his August 2024 food loss. (Exhibit A, pp. 5 – 8).
8. On November 15, 2024, the Department received a request for hearing from Petitioner's AHR, disputing the amount of Petitioner's monthly FAP benefit, and the Department's failure to process a) the ██████ 2024 application, b) the July 3, 2024 change report, and c) the September 5, 2024 food replacement affidavit. (Exhibit A, pp. 3 – 4).

### **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 amount of his monthly FAP benefit, and the Department's a) failure to process a FAP application dated [REDACTED] 2024, b) failure to process a change report date July 3, 2024, and c) failure to process a food replacement affidavit received by the Department on September 5, 2024 for the amount of \$500.

As a preliminary matter, Petitioner previously had a hearing regarding the April application and July change report on October 3, 2024 in MOAHR Case No. 24-009283. At that hearing, Petitioner's AHR testified that the issues related to the April application and July change report were resolved and requested to withdraw her request for hearing in that case. The Department did not object to the withdrawal, and an order of dismissal based on the request to withdraw was issued on October 8, 2024. A party who has received an adverse hearing decision may request a rehearing or reconsideration, which must be received by MOAHR within 30 days following date the order of dismissal was issued and must include the specific reasons for the request. BAM 600 (June 2024), pp. 45 – 47; Mich Admin Code, R 792.11015. A request for reconsideration which presents the same issues previously ruled on, either expressly or by reasonable implication, shall not be granted. Mich Admin Code, R 792.10135. Because Petitioner's request for hearing as to the April application and July change report is a request to rehear or reconsider a previously issued order and was not received by MOAHR on or before November 7, 2024, the undersigned ALJ has no jurisdiction or authority to reconsider those matters and will not do so.

Therefore, this decision will address only Petitioner's request for hearing regarding a) his monthly FAP benefit amount, and b) the Department's actions related to Petitioner's food replacement affidavit received by the Department on September 5, 2024 for the amount of \$500.

### **Monthly FAP Benefit**

Petitioner's AHR requested a hearing to dispute the amount of Petitioner's monthly FAP benefit. The Department testified that it issued a NOCA to Petitioner on October 3, 2024 that approved Petitioner for FAP benefits for August 2024 in the amount of \$414, September 2024 in the amount of \$414, and October 2024 ongoing in the amount \$429. The Department then issued a NOCA on October 28, 2024 that approved Petitioner for FAP benefits of \$536 per month for a two-person FAP group effective November 1, 2024 ongoing. Petitioner's AHR testified that she did not dispute Petitioner's monthly FAP benefit effective November 1, 2024 ongoing.

Clients have the right to contest a Department decision affecting eligibility or benefit levels, including termination of program benefits, when the client believes the decision is incorrect. BAM 600 (June 2024), p. 1. In preparation for the hearing, the Department is

required to send MOAHR and the client a hearing summary, which must include a clear, concise statement of the case action taken, a chronological summary of events, and citations to relevant law and policy, amongst other things. BAM 600, pp. 9 – 10, 24. A hearing packet must be prepared to send along with the hearing summary, and must include, at a minimum, the relevant NOCA and a copy of all documents the Department intends to offer to support its action. BAM 600, pp. 10, 24. To determine a client's monthly FAP benefit eligibility, the Department must budget the household's gross monthly earned and unearned income and then reduce the household's gross monthly income by certain deductions as permitted by policy to arrive at the FAP group's net income. BEM 550 (February 2024); BEM 556 (May 2024), pp. 1 – 7. The amount of FAP benefits a group is eligible to receive is dependent on the FAP group's net income and group size. BEM 556, pp. 6 – 8; RFT 260 (October 2023, October 2024). After the hearing, the ALJ has the duty to review the evidence presented and based on that evidence, determine whether the Department met its burden of proving that the challenged actions were taken in compliance with law and Department policy. BAM 600, p. 39.

Here, as it relates to Petitioner's monthly FAP benefit amount, the hearing packet included only Petitioner's request for hearing and the October 28 NOCA for Petitioner's FAP benefits effective November 1, 2024. Although the Department recognized that Petitioner's request for hearing was related to actions taken by the Department prior to the October 28, 2024 NOCA, as evidenced by its reference to the July 2024 change report, the Department presented no evidence regarding any actions it took prior to the October 28, 2024 NOCA; specifically in support of how it determined Petitioner's FAP benefit amount for August 1, 2024 through October 31, 2024. Therefore, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FAP benefits from August 1, 2024 through October 31, 2024.

#### **Food Replacement Affidavit of September 5, 2024**

Petitioner requested a hearing to dispute the Department's failure to process a food replacement affidavit dated August 27, 2024 in the amount of \$500. The Department processed Petitioner's food replacement affidavit on November 7, 2024, and issued replacement FAP benefits to Petitioner on November 8, 2024 in the amount of \$414. At the hearing, Petitioner's AHR clarified that she disputed the amount of the FAP benefit replacement.

FAP recipients may be issued a replacement FAP benefit when food, purchased with FAP benefits, has been destroyed in a domestic misfortune or disaster and is timely reported. BAM 502 (January 2024), p. 1. Whether approving or denying replacement FAP benefits, the Department is to issue a BN to the client within ten days of receiving a Food Replacement Affidavit and any required verifications. BAM 502, p. 1. Policy provides that, except for households certified as part of Emergency Food Assistance for Victims of Disasters, replacement issuance shall be in the amount of the loss to the household, up to a maximum of one month's allotment, unless the issuance includes restored benefits, which shall be replaced up to their full value. BAM 502, pp. 1 – 2.

Here, there was no dispute that Petitioner submitted a Food Replacement Affidavit to the Department on September 5, 2024 for a loss that occurred in late August 2024, and was approved for replacement benefits on November 7, 2024. The Department testified that it issued replacement FAP benefits of \$414 to Petitioner on November 8, 2024. In support of the amount of replacement FAP benefits issued, the Department testified that Petitioner's monthly FAP benefit amount in August and September 2024 was \$414. When the Department discovers it failed to meet the standard of promptness, it is to take action to correct the issue, as it did here. BAM 115 (May 2024), p. 34. Therefore, although the Department did not issue the BN or replacement benefits to Petitioner within the standard of time required by policy, the Department did properly determine Petitioner was eligible for replacement FAP benefits in an amount equal to his monthly FAP benefit for August 2024 and issued those benefits to Petitioner prior to the instant hearing.

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 approved Petitioner for replacement FAP benefits in an amount equal to his monthly FAP benefit, but failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Petitioner's FAP benefits for the period of August 1, 2024 through October 31, 2024.

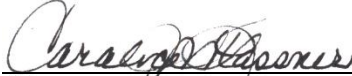
### **DECISION AND ORDER**

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 eligibility for FAP benefits for the period of August 1, 2024 through October 31, 2024;
2. If Petitioner is eligible for any supplemental FAP benefits, including supplemental replacement FAP benefits, issue supplemental payments to Petitioner for any FAP benefits he was eligible to receive but did not, for the period of August 1, 2024 through October 31, 2024; and
3. Notify Petitioner in writing of its decision.

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**  
Tracey Jones  
Oakland County Southfield District III  
25620 W. 8 Mile Rd  
Southfield, MI 48033  
**MDHHS-Oakland-6303-Hearings@michigan.gov**

**Interested Parties**  
BSC4  
M. Holden  
N. Denson-Sogbaka  
B. Cabanaw  
MOAHR

**Via-First Class Mail :**

**Petitioner**  
[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]

**Authorized Hearing Rep.**  
[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]