



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

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[REDACTED] MI [REDACTED]

Date Mailed: February 28, 2019
MAHS Docket No.: 18-013888
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 February 21, 2019, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Richkelle Curney, Hearing Facilitator.

ISSUE

Did the Department properly close the Petitioner's Food Assistance (FAP) for December 1, 2018, through December 16, 2018?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Petitioner was an ongoing recipient of FAP benefits until her case closed and her FAP benefits ended on December 1, 2018. Thereafter, the Petitioner filed a new FAP application on December 17, 2018. (Exhibit A.)
2. The Petitioner requested a hearing on December 14, 2018 requesting that she receive benefits for December 1, 2018, through December 16, 2018.
3. The Petitioner's December 14, 2018, hearing request with respect to the closure of her FAP was timely based upon the Department's testimony that a Notice of Case Action was sent by the Department on October 12, 2018, closing the FAP case

due to excess income, effective November 1, 2018. The Notice of Case Action was not provided by the Department at the hearing.

4. The Petitioner's original hearing request regarding the October 12, 2018, Notice of Case Action was dated October 22, 2018, for Case No. 18-011025 and requested a hearing regarding her FAP benefit case closing. That hearing request, based upon records of the Michigan Administrative Hearing System (MAHS) was dismissed due to Petitioner's failure to appear for her hearing on November 28, 2018.
5. The Petitioner filed a request to vacate the dismissal of her October 22, 2018, hearing request for failure to appear on November 28, 2018, which was granted; and MAHS vacated the earlier dismissal for Petitioner's failure to appear.
6. MAHS issued a new Notice of Hearing scheduling a hearing on February 6, 2018. The Petitioner failed to appear for this hearing, and her request to vacate the dismissal due to her failure to appear on February 6, 2018 was denied.
7. The Petitioner filed a timely hearing request dated December 14, 2018, protesting the closure of her FAP Case No. 18-011025 due to excess income.

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, the undersigned has determined that the Petitioner's December 14, 2018, hearing request regarding her FAP benefit case closure for DHHS Case No. 18-011025 is timely filed. The Petitioner failed to appear at the rescheduled hearing on February 6, 2019, regarding her FAP case closure, causing her October 22, 2018 hearing request to be dismissed by MAHS for failure to appear, and her request to vacate the hearing request dismissal was denied. However, the hearing request regarding this hearing, dated December 14, 2018, challenging the FAP case closure due to excess income was timely as it was received within 90 days of the Notice of Case Action date.

BAM 600 requires that the client has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days. Although the Department did not include the Notice of Case Action closing the Petitioner's FAP benefits case due to excess income, the Department representative testified at the hearing that the Notice was dated October 12, 2018, and closed the FAP case due to net income exceeding the limit effective November 1, 2018. The December 14, 2018, Hearing request was filed within 63 days of the Notice closing the Petitioner's case, and thus, was timely notwithstanding the dismissal of Petitioner's earlier hearing request dated October 22, 2018 regarding the October 12, 2018 Notice closing her FAP benefits. The earlier request was dismissed after Petitioner failed to appear for a rescheduled hearing on February 6, 2019. The dismissal was not on the merits of the case but was a dismissal due to failure of Petitioner to appear. BAM 600 (October 2018), p. 6.

The Department also testified during the instant hearing that the issue (closure due to excess net income) had been resolved and Petitioner received FAP benefits for November 2018. The Petitioner confirmed receipt of her November 2018 benefits. The Department further testified that the October 12, 2018, Notice was the only notice that the Department had in its bridges system. The Department could not explain why the Petitioner did not receive FAP benefits for the period December 1, 2018, through December 16, 2018. Petitioner filed a new FAP application on December 17, 2018. The Department conceded after an extensive effort to determine why the FAP case closed in December ending FAP benefits, that it could not explain why the FAP case closed on December 1, 2018, and FAP benefits were ended.

In conclusion, given that the December 14, 2018 Hearing Request filed by Petitioner was timely filed, the Department did not meet its burden of proof to explain the Department's FAP benefit case closure due to excess income and FAP case closure for the period December 1, 2018, through December 16, 2019.

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 failed to provide FAP benefits to the Petitioner for the period December 1, 2018, through December 16, 2018.

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. The Department shall reinstate the Petitioner's FAP case, DHHS Case No. 18-011025 and redetermine Petitioner's FAP eligibility for the period December 1, 2018, through December 16, 2018.
2. If the Department determines that Petitioner was otherwise eligible for FAP benefits in accordance with Department policy during the December 1, 2018, through December 16, 2018, the Department shall issue a FAP supplement for this period.
3. The Department shall provide a written explanation of its determination of Petitioner's eligibility for FAP benefits for the period December 1, 2018, through December 16, 2018.

LMF/jaf



Lynn M. Ferris

Administrative Law Judge
for Robert Gordon, Director

Department of Health and Human Services

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Tara Roland 82-17
MDHHS-Wayne-17-Hearings

Petitioner

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