



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: February 1, 2019
MAHS Docket No.: 18-013288
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 January 22, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Juanita Munoz, Hearings Liaison, and Sheila Talley, Family Independence Specialist.

ISSUE

Did Petitioner's December 6, 2018 hearing request raise any issues over which the undersigned Administrative Law Judge has jurisdiction?

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 was an ongoing Food Assistance Program (FAP) recipient with a group size of four.
2. On [REDACTED], 2018, the Department issued to Petitioner a Redetermination in order to gather relevant information regarding Petitioner's ongoing eligibility for FAP benefits. Petitioner was required to return the completed Redetermination by [REDACTED] 2018.
3. On [REDACTED] 2018, Petitioner returned to the Department the completed Redetermination.

4. On [REDACTED] 2018, Petitioner reported to the Department that her son had moved out of the home.
5. On [REDACTED] 2018, Petitioner reported to the Department that her daughter was no longer was working as a home health aide and that her income with her parking job was not regular.
6. The Department did not send out any Notice of Case Action informing Petitioner of her redetermined FAP benefits. Instead, Petitioner was issued \$[REDACTED] in FAP benefits for the month of November 2018 on November 16, 2018. Petitioner also received \$[REDACTED] in FAP benefits for the month of December 2018. For each month, the Department found that Petitioner had \$[REDACTED] in monthly earned income based on her daughter's income as a home health aide and with the parking company.
7. On November 18, 2018, Petitioner submitted to the Department a request for hearing objecting to the Department's calculation of her FAP benefits, including the Department's failure to consider her changes of household income.
8. On November 27, 2018, the Department issued to Petitioner a Hearing Summary for the hearing prompted by Petitioner's November 18, 2018, request for hearing.
9. On December 6, 2018, the office of the undersigned Administrative Law Judge issued to Petitioner a Notice of Hearing informing Petitioner that, pursuant to Petitioner's November 18, 2018, request for hearing, Petitioner had a hearing scheduled for December 20, 2018, in MAHS Docket No. 18-012154.
10. On [REDACTED] 2018, Petitioner submitted to the Department a document disagreeing with the information contained in the Hearing Summary submitted by the Department.
11. The Department considered Petitioner's [REDACTED], 2018, submission another request for hearing and sent it to MAHS to schedule another hearing. MAHS assigned that case MAHS Docket No. 18-013288.

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.

This case was started when the Department failed to properly budget Petitioner's reported income changes. Petitioner submitted to the Department a November 18, 2018 request for hearing objecting to the Department's calculation of her FAP benefits for the months of [REDACTED] and [REDACTED] 2018. When the Department staged that request for a hearing, it sent out a Hearing Summary to Petitioner on November 27, 2018. That Hearing Summary included a statement of the Department's position with respect to Petitioner's FAP benefits calculation. MAHS then sent out a Notice of Hearing on [REDACTED], 2018, informing the parties of a December 20, 2018, hearing on the matter in MAHS Docket No. 18-012154.

When Petitioner received the information regarding the hearing, including the Hearing Summary, Petitioner submitted a document to the Department expressing disagreement with what was contained in the Hearing Summary. The Department received that document from Petitioner on [REDACTED], 2018, and considered it to be another hearing request. When MAHS received the information from the Department, it scheduled the instant matter. Notably, this was filed prior to the hearing even taking place in MAHS Docket No. 18-012154.

The hearing in MAHS Docket No. 18-012154 took place on December 20, 2018. On December 27, 2018, the undersigned issued a decision reversing the Department. The Department was ordered to properly process the income change reports, redetermine Petitioner's FAP benefits for [REDACTED] and [REDACTED] 2018, and issue Petitioner a supplement to make up the difference between what Petitioner received and what she should have received.

Rather than issuing a supplement of FAP benefits for [REDACTED] and [REDACTED] 2018, the Department issued a Notice of Overissuance demanding Petitioner pay back to the Department all FAP benefits she received in [REDACTED] and [REDACTED] 2018. Thus, rather than issuing Petitioner additional benefits as ordered in MAHS Docket No. 18-012154, the Department issued Petitioner nothing additional and deemed the benefits received as improper.

Clearly, it appears as though the Department failed to properly implement the December 27, 2018, decision in MAHS Docket No. 18-012154. In fact, the Department witnesses conceded on the record that the Notice of Overissuance was not in accordance with the order and could not explain how the system produced the alleged overissuance. The witnesses stated that "a ticket" was being created to fix what appeared to be a glitch in the system. However, Petitioner's hearing request was submitted prior to the hearing even taking place in MAHS Docket No. 18-012154.

Clients have the right to a hearing to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. Upon receiving a

request for hearing, the Department will forward the matter to the Michigan Administrative Hearing System (MAHS) for a hearing before an Administrative Law Judge (ALJ). The ALJ has jurisdiction to hear a case involving any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits, or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. BAM 600 (January 2018), p. 5.

However, the ALJ only has jurisdiction to hear a timely and properly submitted request for hearing. BAM 600 (January 2018), p. 6, provides in relevant part as follows:

The client or [authorized hearing representative] 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.

Petitioner did not submit a hearing request that raises any issues this ALJ has jurisdiction to hear. Petitioner's December 6, 2018, hearing request was simply arguing the same issues raised by her November 18, 2018, hearing request. Those issues were addressed in the decision in MAHS Docket No. 18-012154. Because Petitioner's hearing request was essentially a duplicate of the November 18, 2018, hearing request on a matter that has already been adjudicated, the ALJ lacks jurisdiction to address the concerns raised in the hearing request. Petitioner's request for a hearing is dismissed for lack of jurisdiction.

It should be noted that Petitioner may file a hearing request objecting to the Department's assertion that she received a FAP overissuance in [REDACTED] or [REDACTED] 2018. She must do so within 90 days of the issuance date of the Notice of Overissuance. If she files a timely hearing request, she is entitled to a hearing on the matter.

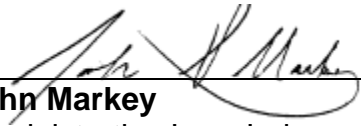
THEREFORE,

IT IS ORDERED that Petitioner's December 6, 2018, request for hearing with respect to her FAP benefits amount is **DISMISSED** for lack of jurisdiction.

IT IS FURTHER ORDERED that nothing in this decision and order alters in any way the decision and order issued on December 27, 2018, in MAHS Docket No. 18-012154

ordering the Department to recalculate Petitioner's [REDACTED] and [REDACTED] 2018 FAP benefits and thereafter issue Petitioner a supplement.

JM/jaf



John Markey
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).

DHHS

Jeanette Cowens
MDHHS-Wayne-41-Hearings

Petitioner

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