



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: June 3, 2019
MOAHR Docket No.: 19-004106
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 May 30, 2019, from Lansing, Michigan. Petitioner was unrepresented. The Department of Health and Human Services (Department) was represented by M McLaurin, Hearings Facilitator.

ISSUE

Did the Department properly budget Petitioner's FAP benefits?

FINDINGS OF FACT

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

1. At all relevant times, Petitioner has been a FAP recipient. Petitioner is 95 years old.
2. On April 16, 2019, Petitioner filed a hearing request regarding his FAP issuances.
3. Petitioner received the following issuances: January of 2019, \$173.00; February of 2019, \$112.00; March of 2019, \$112.00; April of 2019, \$173.00; May of 2019, \$69.00.
4. Petitioner receives ██████████ in social security income. Petitioner has BCBS supplemental/gap policy expense of ██████████ per month, raised to ██████████ per month effective February 1, 2019; Part B of ██████████ per month until April 1, 2019,

when the MDHHS began MCS program and the Department began paying the Part B; and an 'old insurance' expense of [REDACTED].

5. The Department stipulated that it failed to budget certain tax and insurance expenses Petitioner pays for, which Petitioner delivered to the Department but which verification(s) the Department stated it did not have forwarded to the ES worker. The Department stipulated that it failed to request the verifications of Petitioner by failing to issue a policy-required Verification Checklist at redetermination. Petitioner had the verifications with him at the administrative hearing, which the Department now has agreed to make copies of after the hearing.
6. A review of the January and April of 2019 budgets show that Petitioner was entitled to the full FAP benefit of \$192.00. Petitioner is owed a \$19.00 supplement for January of 2019, and for \$19.00 for April of 2019.
7. The Department failed to present credible evidence as to what was budgeted for expenses on the remaining budgets since January of 2019: February, March, and May of 2019, ongoing.

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.

Applicable Department policy is found at BEM 105, 110, 115, 130, 210, 220, 300 and BEM 105, 164, 166, and 554. Corresponding federal regulations are found at 7 CFR 273.2, 273.10, 273.2, 273.12, and 273.21.1

In this case, the Department has the burden of going forward to establish evidence to support the action taken the Department, and that the actions are in compliance with federal and state policy.

Here, the failure of the Department to budget Petitioner's medical expenses for the months of January and April of 2019 clearly establish that Petitioner was entitled to the cap of FAP monthly benefits--\$192.00. As Petitioner was issued \$173.00, Petitioner is owed \$19.00 for each month.

As to the remaining months, the Department's evidence was insufficient to review at the administrative hearing. The Department indicated that there have been changes in Petitioner's budgets and the Department representative was unable to get into Bridges due to error messages that kept coming up, barring the Department from submitting relevant evidence. In addition, there was information that the Department was unable to budget Petitioner's taxes and insurance payments on the grounds that Petitioner failed to submit verifications. However, this was contrary to the evidence at hearing—Petitioner credibly testified that he delivered the verifications, and to whom they were delivered. In addition, the Department stipulated that it failed to issue the necessary Verification Checklist required to support its action, contrary to policy and federal law. Under these facts, the Department's FAP budgets could not be adequately reviewed at hearings, and the issuances could not be verified. As such, the issuance amounts cannot be upheld and must be reviewed.

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 in budgeting Petitioner's FAP eligibility since January 2019.

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. Recalculate Petitioner's FAP budgets and FAP expenses, including medical, taxes, insurance and any other applicable expenses, for the following months: February, March, May 2019 and ongoing. The Department has all necessary verifications in its possession to reprocess.
2. The Department is ordered to issuance written notice to Petitioner informing him of the outcome of its review. Petitioner shall retain a right to an administrative hearing for 90 days from the day of new notice to request a hearing.
3. Issue a supplement FAP payment of \$19.00 each for the months of January and April 2019, totaling \$38.00.

IT IS SO ORDERED.

JS/dh



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

DHHS

Kathleen Verdoni
411 East Genesee
PO Box 5070
Saginaw, MI 48607

Saginaw County, DHHS

BSC2 via electronic mail

EQAD via electronic mail

D. Smith via electronic mail

Petitioner

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