



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: August 20, 2019
MOAHR Docket No.: 19-007588
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 August 15, 2019, from Lansing, Michigan. The Petitioner was represented by Petitioner [REDACTED]. The Department of Health and Human Services (Department or Respondent) was represented by Cheryl Watkins, Assistance Payments Supervisor and Robert Valdez, Eligibility Specialist.

ISSUE

Whether Petitioner's request for hearing is timely filed?

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 [REDACTED] [REDACTED] 2018, Petitioner filed an application for Food Assistance Program benefits (FAP).
2. On April 13, 2019, the Department denied Petitioner's application and sends him notification that his FAP benefits were denied because she had two drug related felony convictions since August 22, 1996.
3. The Department conceded on the record that Petitioner only has one drug related felony.
4. Petitioner did not request a hearing at the time.

5. In March 2019, the Department determined that Petitioner only has one drug related felony conviction since August 22, 1996.
6. On ■■■■■ 2019, Petitioner applied for Food Assistance Program benefits and was approved for Food Assistance Program benefits.
7. On June 17, 2019, the Department sent Petitioner notice that his application for a FAP was approved.
8. On July 16, 2019, Petitioner filed a request for hearing to contest the prior denial of FAP benefits based upon the fact that the Department erred when it determined that he had two drug related felony convictions.
9. On July 25, 2019, the Michigan Office of Administrative Hearings and Rules received a hearing summary and attached documents.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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.

The Michigan Office of Administrative Hearings and Rules (MOAHR) may grant a hearing for 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.

Petitioner testified that he was cut off food stamps due to an error by the Department for over a year. Lansing agent Malik contacted him to inform him that he is eligible to receive food stamps and that he should be able to reapply. Petitioner testified on the hearing that the Department must be held accountable for its mistakes, just as he would be held accountable for any mistakes that he made.

Pertinent department policy and applicable law dictates that:

- The AHR or, if none, the customer has 90 calendar days from the date of the written notice of case action to request a hearing. BAM, Item 600, p. 6.
- A claimant shall be provided 90 days from the mailing of the notice in R 400.902 to request a hearing. R 400.904(4).
- The claimant shall be provided reasonable time, not to exceed 90 days, in which to appeal an agency action. 45 CFR 205.10.
- The agency must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing. 42 CFR 431.221.


Petitioner's allegation is a compelling equitable argument to be excused for the Department's program policy requirements. Unfortunately, this Administrative Law Judge has no equity powers and cannot make decisions in contravention of Department policy which governs timeliness.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Request for Hearing was untimely. This hearing request is **DISMISSED** because the request for a hearing was not made within 90 days of the date of notice.

It is so **ORDERED**.

LL/hb



Randis Lain
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 Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Sarina Baber
22 Center Street
Ypsilanti, MI 48198

Washtenaw County, DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

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