



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: October 18, 2019
MOAHR Docket No.: 19-010007
Agency No.: ██████████
Petitioner: ██████████

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 October 16, 2019 from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by ██████████, Family Independence Specialist, and ██████████ Family Independence Manager. During the hearing, a 12-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-12.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) eligibility, effective October 1, 2019?

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 recipient of FAP benefits from the Department.
2. Petitioner had monthly unearned income of ██████████. The Department included in Petitioner's FAP budget a housing expense of ██████████, which was comprised of Petitioner's land contract and taxes. However, Petitioner credibly testified that he had an additional ██████████ per month in homeowner's insurance that was not being budgeted despite his repeated disclosures to the Department that he had those expenses. Exhibit A, pp. 5-9.

3. On September 7, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that his monthly FAP benefits would be reduced by ■■■■ to ■■■■, effective October 1, 2019. The reason given for the change was that Petitioner's "shelter deduction amount has changed because shelter expense has changed or income has changed." Exhibit A, pp. 5-9.
4. On September 13, 2019, Petitioner requested a hearing to dispute the change in his FAP benefits, effective October 1, 2019.

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, Petitioner objected to the reduction of his monthly FAP benefits, effective October 1, 2019. According to the Notice of Case Action informing Petitioner of the change, the change was due to a change in Petitioner's shelter deduction. During the hearing, the Department explained that the heating and utility standard was reduced from ■■■■ to ■■■■, which caused the change. However, Petitioner challenged the Department's action with respect to another aspect of his shelter expenses, namely the Department's failure to include his homeowner's insurance into the housing costs equation.

The Department factors certain expenses into the FAP budget to determine benefit levels. BEM 554 (October 2019), p. 1. Shelter expenses, including housing expenses such as land contract payments, property taxes, and insurance are considered if they meet certain criteria. BEM 554, pp. 13-14. Amongst those criteria are the requirements that someone in the FAP group has the responsibility to pay for the service in money and that any required verifications are provided. BEM 554, p. 1. Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130 (April 2017), p. 1. Verifications are required under many different circumstances, including when an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BAM 130, p. 1.

Petitioner's assertion that he was responsible for homeowner's insurance created a situation where an eligibility factor was unclear or incomplete. At that point, the Department had an obligation to follow the verification procedure clearly outlined in BAM 130. By failing to do so and instead only including taxes and the land contract costs into the equation, the Department deprived Petitioner of the opportunity to verify an expense that could have resulted in Petitioner being found eligible for a higher level of FAP benefits than he was.

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 determined Petitioner's eligibility for FAP benefits, effective October 1, 2019.

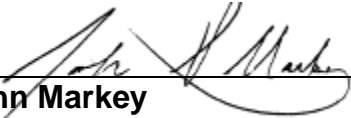
DECISION AND ORDER

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. Redetermine Petitioner's FAP eligibility back to October 1, 2019, ongoing;
2. If any eligibility-related factors, such as housing costs, remain unclear, inconsistent, contradictory, or incomplete, follow Department policy in requesting and processing verifications;
3. If Petitioner is found to be eligible for additional benefits, ensure that a prompt supplement is issued; and
4. Notify Petitioner in writing of its decisions.

JM/tm



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 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

cc: FAP: M. Holden; D. Sweeney
AP Specialist Clare County (2)

DHHS

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Petitioner

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