



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: November 8, 2019
MOAHR Docket No.: 19-010830
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 November 6, 2019 from Detroit, Michigan. Petitioner was represented by his mother and Authorized Hearing Representative (AHR), [REDACTED]. [REDACTED] The Department of Health and Human Services (Department) failed to appear for the hearing.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits case, effective [REDACTED]?

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. On [REDACTED], the Department issued to Petitioner a Notice of Case Action informing Petitioner that his FAP case was closing, effective [REDACTED] 2019.
3. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the closure of his FAP case.

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 disputes the closure of his FAP benefits case, effective [REDACTED] 2019. Upon receiving the hearing request, the Department put together a hearing summary and hearing packet and forwarded it to the Michigan Office of Administrative Hearings and Rules (MOAHR) to be scheduled for a hearing.

Upon receiving the hearing summary and hearing packet, MOAHR scheduled the matter for a hearing before an Administrative Law Judge. A Notice of Hearing was issued to the parties on October 24, 2019 informing them of the hearing taking place on November 6, 2019 at 10:00 am. The parties were informed that they were required to appear at a Department office to participate in the hearing. When Petitioner received the Notice of Hearing, he contacted MOAHR and requested to participate via telephone and provided a phone number to be contacted at the time of the hearing. The request was granted, and the Department was notified of the change on November 1, 2019. On November 6, 2019, the Department was informed via email that Petitioner's hearing was ready to go and requested a phone number at which the Department could be contacted in order to participate in the hearing. The Department received that email and opened it well before the hearing time of 10:00 am. However, the Department did not respond to the message or otherwise provide a call-back number. The hearing was held in the Department's absence after providing the Department with 30 minutes to appear.

Clients have the right to contest a Department decision affecting eligibility or benefit levels, including termination of program benefits, when the client believes the decision is incorrect. BAM 600 (October 2018), pp. 1, 5. When a hearing request is filed, the matter is transferred to the Michigan Office of Administrative Hearings and Rules (MOAHR) for a hearing before an Administrative Law Judge. BAM 600, p. 1. In preparation for the hearing, the Department is required to send to MOAHR and the client a hearing summary. BAM 600, pp. 9-10, 24. The hearing summary is required to include a clear, concise statement of the case action taken, a chronological summary of events, and citations to relevant law and policy, amongst other things. BAM 600, p. 10.

Additionally, a hearing packet must be prepared to send along with the hearing summary. BAM 600, p. 10. The completed hearing packet must include, at a minimum, the relevant Notice of Case Action or Health Care Coverage Determination Notice and a copy of all documents the Department intends to offer to support its action. BAM 600, p. 10.

At the hearing, the Department representative and client are tasked with presenting their respective cases with reference to the documents provided in the hearing packet or otherwise properly served under the Michigan Administrative Rules. BAM 600, p. 37. After hearing the evidence, the Administrative Law Judge has the duty to review the evidence presented and based on that evidence, determine whether the Department met its burden of proving that the challenged actions were taken in compliance with law and Department policy. BAM 600, p. 39.

Petitioner's hearing request concerned Department action taken with respect to Petitioner's FAP benefits. As the Department failed to appear for the hearing to explain its actions, it remains unknown what actions were taken, when they were taken, and why they were taken.

As stated above, the Department bears the burden of proving that its actions were taken in compliance with law and policy when those actions are properly contested via a valid hearing request. Petitioner filed a valid hearing request contesting actions taken by the Department with respect to his FAP benefits case. The Department presented zero evidence to substantiate its actions. Thus, Petitioner's testimony is taken as true, and the actions contested by Petitioner's hearing request are reversed.

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 closed Petitioner's FAP benefits case, effective [REDACTED] 2019.

DECISION AND ORDER

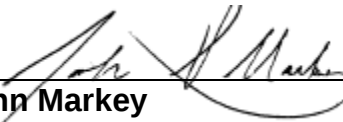
Accordingly, the Department's decision is **REVERSED**.

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. Reinstate Petitioner's FAP benefits case back to [REDACTED], 2019;
2. Issue to Petitioner a supplement for the benefits he would have received from October 1, 2019 through present had not the Department closed his FAP case;

3. Determine Petitioner's ongoing eligibility for FAP benefits and ensure that any negative action taken with respect to Petitioner's ongoing FAP benefits is done with appropriate timely notice;
4. If any eligibility-related factors are unclear, inconsistent, incomplete, or contradictory, follow Department policy regarding verifications; and
5. 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

DHHS

Linda Gooden
25620 W. 8 Mile Rd
Southfield, MI 48033

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

cc: FAP: M. Holden; D. Sweeney
Oakland County AP Specialist (4)