



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: December 23, 2019
MOAHR Docket No.: 19-012300
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

ORDER OF DISMISSAL
FOR LACK OF JURISDICTION

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on December 18, 2019, from Lansing, Michigan. Petitioner was represented by herself. The Department of Health and Human Services was represented by Cheryl Watkins.

ISSUE

Does Petitioner's request for a hearing raise an issue falling under the jurisdiction of the Michigan Office of Administrative Hearing System (MOAHR)?

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 requested a hearing protesting her current level of Food Assistance Program (FAP) benefits, which was scheduled for November 13, 2019. MOAHR Docket No. 19-011358.
2. Petitioner attended her November 13, 2019, hearing, but withdrew her hearing request protesting the determination of her monthly allotment of Food Assistance Program (FAP) benefits.
3. On November 13, 2019, the Department received Petitioner's request for a hearing protesting her Food Assistance Program (FAP) benefit certification period.

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.

Petitioner is an ongoing FAP recipient, and sometime in September of 2019, the Department initiated a routine redetermination of her eligibility for ongoing benefits. The Department failed to properly determine Petitioner's eligibility for benefits based, but corrected that determination once Petitioner's circumstances were accurately accounted for. The Department's revised redetermination of eligibility resulted in Petitioner withdrawing from an administrative hearing scheduled for November 13, 2019, and accepting the new monthly allotment of benefits.

Petitioner then requested a second administrative hearing protesting a change of her FAP benefit certification occurring when the Department redetermined her eligibility for ongoing FAP benefits.

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. The Michigan Administrative Hearing System (MAHS) 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. Department of Human Services Bridges Administrative Manual (BAM) 600 (July 1, 2019), p 5.

Availability of hearings. Except as provided in § 271.7(f), each State agency shall provide a fair hearing to any household aggrieved by any action of the State agency which affects the participation of the household in the Program.

7 CFR 273.15(a)

Fair hearings. Any household that has its allotment reduced, suspended or cancelled as a result of an order issued by FNS in accordance with these rules may request a fair hearing if it disagrees with the action, subject to the following conditions. State agencies shall not be required to hold fair hearings unless the request for a fair hearing is based on a household's belief that its benefit level was computed incorrectly under these rules or that the rules were misapplied or misinterpreted. State agencies shall be allowed to deny fair hearings to those households who are merely disputing the fact that a reduction, suspension or cancellation was ordered. Furthermore, since the reduction, suspension or cancellation would be necessary to avoid an expenditure of funds beyond those appropriated by Congress, households do not have a right to a continuation of benefits pending the fair hearing. A household may receive retroactive benefits in an appropriate amount if it is determined that its benefits were reduced by more than the amount by which the State agency was directed to reduce benefits.

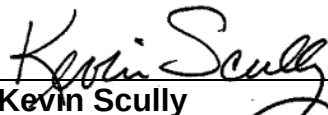
7 CFR 271.7(f)

The Michigan Office of Administrative Hearing System (MOAHR) has no jurisdiction to grant Petitioner a hearing solely based on her dispute over a change to the certification period for her FAP benefits.

Petitioner's hearing request is therefore **DISMISSED** for lack of jurisdiction.

IT IS SO ORDERED.

KS/hb



Kevin Scully
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

Courtney Jenkins
22 Center Street
Ypsilanti, MI 48198

Washtenaw County, DHHS

Petitioner

[REDACTED]
[REDACTED], MI [REDACTED]