



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: December 19, 2019
MOAHR Docket No.: 19-012478
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge (ALJ) 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 December 19, 2019, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Craig Smith, Family Independence Specialist.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefit amount for October 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 FAP recipient.
2. On July 17, 2019, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefits were being reduced to \$86 per month effective September 1, 2019, ongoing (Exhibit A, pp. 24-26).
3. Effective October 1, 2019, Petitioner's FAP benefits increased to \$316 per month (Exhibit A, p. 6).
4. Effective November 1, 2019, Petitioner's FAP benefits increased to \$423 per month (Exhibit A, p. 6).

5. On November 13, 2019, Petitioner submitted a request for hearing disputing the Department's decision to reduce her FAP benefits.

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, the Department sent Petitioner a Notice of Case Action on July 17, 2019, informing her that her FAP benefits were being reduced effective September 1, 2019. Petitioner submitted a request for hearing, disputing the reduction in FAP benefits effective September 1, 2019.

A client's request for hearing must be in writing and signed by an adult member of the eligible group, adult child, or authorized hearing representative (AHR). BAM 600 (April 2017), p. 2. Moreover, Department policy provides that a request for hearing must be received in the Department local office within 90 days of the date of the written notice of case action. BAM 600, p. 6.

Petitioner submitted her request for hearing disputing the Department's actions on [REDACTED] 2019. Petitioner's request for hearing was not within the 90-day time limit from the date of the July 17, 2019 notice. Therefore, the undersigned ALJ does not have jurisdiction to address Petitioner's decrease in FAP benefits effective September 1, 2019.

The Department testified that Petitioner's FAP benefits increased to \$316 effective October 1, 2019, and to \$423 effective November 1, 2019. Petitioner disputed the calculation of the October FAP benefit amount of \$316. Petitioner stated she was satisfied with the FAP benefit amount of \$423. The Department was unsure as to when the Notice of Case Action was issued notifying Petitioner that she was entitled to \$316 in FAP benefits effective October 1, 2019. The notice was likely issued in September 2019. Therefore, Petitioner has timely hearing request to address the matter of her October 2019 FAP benefit amount.

The Department testified that Petitioner received a lower FAP benefit amount in October 2019 than in November 2019, due to the amount of child support that she received. The Department did not provide the Notice of Case Action with the budget summary

showing the calculation of Petitioner's October 2019 FAP benefit amount, nor did it provide a FAP budget for October 2019.

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 (ALJ). 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 and a copy of all documents the Department intends to offer to support its action. BAM 600, p. 10.

After hearing the evidence, the ALJ 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. The Department did not comply with the policy requirements set forth in BAM 600 to allow the undersigned ALJ to make a competent decision with respect to Petitioner's FAP benefit amount in October 2019. Therefore, the Department failed to establish that it acted in accordance with policy when it determined Petitioner's October 2019 FAP benefit amount.

DECISION AND ORDER

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 October 2019 FAP benefit amount.

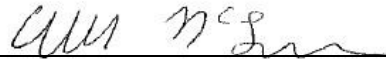
Accordingly, the Department's decision is **REVERSED**.

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 for October 2019;
2. If Petitioner is entitled to additional FAP benefits, issue supplements she is entitled to receive; and

3. Notify Petitioner of its decision in writing.

EM/cg



Ellen McLemore
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

Via Email:

MDHHS-Wayne-31-Grandmont-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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