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GOVERNOR

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

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DIRECTOR

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**DEONTE LEWIS
18935 MANSFIELD ST
DETROIT, MI 48235**

Date Mailed: January 30, 2020
MOAHR Docket No.: 19-013517
Agency No.: 103119265
Petitioner: Deonte Lewis

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 January 27, 2020 from Detroit, Michigan. Petitioner appeared and represented himself. Also appearing on behalf of Petitioner was Petitioner's wife, Jonneshia Doss. The Department of Health and Human Services (Department) was represented by Amber Ogden, Assistance Payments Supervisor, and Avery Santana-Smith, Family Independence Manager. During the hearing, an 11-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-11.

ISSUE

Did the Department properly determine Petitioner's eligibility for Food Assistance Program (FAP) benefits, effective January 1, 2020?

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. At some point, Petitioner submitted to the Department paycheck stubs showing his earnings from employment.
3. On November 21, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that the Department was reducing his monthly FAP amount, effective January 1, 2020. Exhibit A, pp. 5-7.

4. On December 18, 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's action.

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 requested a hearing to challenge the Department's determination of his FAP eligibility, effective January 1, 2020, ongoing. Prior to that date, Petitioner's household was receiving \$426 in monthly FAP benefits.¹ Effective January 1, 2020, Petitioner's household was found to be eligible for \$369 in monthly FAP benefits.²

Upon filing 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. In the hearing summary, the Department asserted, in relevant part, that Petitioner "submitted updated pay stubs recently, which were used to complete a new budget for the FAP program. This resulted in a benefit decrease."

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 (July 2019), 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.

¹ After accounting for the \$47 taken out of each month's allotment as recoupment for a previous overissuance.

² After accounting for the \$40 taken out of each month's allotment as recoupment for a previous overissuance.

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, pp. 37-38. 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, pp. 39-40.

The Department's Hearing Summary asserts that the Department based its decision to reduce Petitioner's monthly FAP allotment on "updated pay stubs...which were used to complete a new budget." The Department did not provide any of those pay stubs in the hearing packet, despite acknowledging in the Hearing Summary that those were the entire basis of the action taken by the Department. When asked to justify how the Department determined that Petitioner had the earnings the Department asserted he had, the Department was only able to offer up a general explanation that it came from his paystubs. When asked which specific paystubs were used and how much they were for, the Department was unable to answer with any confidence.

The Department bears the burden of proof and has an obligation to provide at hearing the documentary support for its decision. The Department's inability to explain how it reached its conclusions and failure to provide the documents relied upon in coming to those conclusions lead to the inevitable conclusion that the Department failed to meet its burden of proving that it correctly determined Petitioner's eligibility for FAP benefits, effective January 1, 2020.

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 January 1, 2020.

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 eligibility for FAP benefits from January 1, 2020, ongoing;
2. If any eligibility-related factors are unclear, inconsistent, contradictory, or incomplete, follow Department policy regarding verifications;

3. If Petitioner is found to be eligible for additional FAP benefits, ensure that a supplement is promptly 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

DHHS

Denise McCoggle
27260 Plymouth Rd
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Petitioner

Deonte Lewis
18935 Mansfield St
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cc: FAP: M. Holden; D. Sweeney
AP Specialist-Wayne County