



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: July 11, 2019  
MOAHR Docket No.: 19-005822  
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 July 3, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) failed to appear for the hearing.

**ISSUE**

Was the Department's action taken with respect to Petitioner's Medicaid (MA) benefits case in compliance with law and Department policy?

Was the Department's action taken with respect to Petitioner's Medicare Savings Plan (MSP) benefits case in compliance with law and Department policy?

Was the Department's action taken with respect to Petitioner's Food Assistance Program (FAP) benefits application in compliance with law and Department policy?

**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 lived in a household that included just herself. Petitioner was receiving MSP and MA benefits. Petitioner's MSP benefits have been uninterrupted. However, Petitioner's MA benefits were changed by the Department at some point in the recent past.

2. On [REDACTED], 2019, Petitioner submitted to the Department an application for FAP benefits. The Department has taken no action with respect to that application.
3. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's action with respect to Petitioner's MA, MSP, and 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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, Petitioner submitted a hearing request to the Department on or about May 29, 2019, contesting actions taken with respect to Petitioner's MA and MSP benefits cases and inaction with respect to Petitioner's FAP application. Upon receiving the hearing request, the Department put together a hearing summary and hearing packet and forwarded the matter to the Michigan Office of Administrative Hearings and Rules (MOAHR). In the section titled "Explanation of action taken and facts and fact sources used in taking action," the Department stated as follows:

The Department of Health and Human Services received a hearing request on [REDACTED] regarding [REDACTED] Medical Medicare cost share and food assistance. [REDACTED] currently has active Medical benefits and cost share effective 6/1/19. Her benefits have been uninterrupted. [REDACTED] is inquiring about food benefits, [REDACTED] has not received or applied for food benefits since 2013. An 1171 has been mailed to [REDACTED] so that she can apply for food assistance.

Also included in the hearing packet were a copy of Petitioner's hearing request, screengrabs from a page in Bridges titled "Eligibility Summary," and a May 28, 2019 Health Care Coverage Determination Notice that included information for both Petitioner and Meagan Gryglas, who had not lived with Petitioner for over one year.

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 June 19, 2019, informing them of the hearing taking place on July 3, 2019, at 8:30 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, she contacted MOAHR and requested to participate via telephone due to her physical limitations and provided a phone number at which she could be contacted at the time of the hearing. The request was granted, and the Department was notified of the change on June 26, 2019. On July 3, 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 8:30 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 three programs: FAP, MA, and MSP. As the Department failed to appear for the hearing and

the documents in the hearing packet are not sufficient to determine what happened, 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 her MA, MSP, and FAP benefits cases. 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 took action with respect to Petitioner's FAP, MA, and MSP benefits cases.


### **DECISION AND ORDER**

Accordingly, the Department's decisions are **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 MA and MSP benefits back to the beginning of the new 2019 certification period;
2. Reregister and process Petitioner's [REDACTED], 2019 FAP application;
3. If any eligibility-related factors remain unclear, inconsistent, or contradictory, follow Department policy in issuing verifications checklists that clearly request the information required;
4. If Petitioner is eligible for additional benefits that were not provided, promptly issue supplements to Petitioner; and
5. Provide Petitioner with adequate written notice of its decisions that accurately convey to Petitioner the actions taken by the Department and the reason(s) for the actions.

JM/cg

  
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**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

**Via Email:**

MDHHS-Wayne-15-Hearings  
M. Holden  
D. Sweeney  
D. Smith  
EQAD  
BSC4- Hearing Decisions  
MOAHR

**Petitioner – Via First-Class Mail:**

. [REDACTED]  
[REDACTED]  
[REDACTED]