



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: July 16, 2019
MOAHR Docket No.: 19-006239
Agency No.: ██████████
Petitioner: ██████████

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 11, 2019, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Dawn McCoy, Hearings Facilitator. During the hearing, a 28-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-28.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits case, effective April 1, 2019?

Did the Department establish an overissuance of FAP benefits of \$366?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On ██████████, 2018, Petitioner submitted to the Department an application for FAP benefits. On the application, Petitioner was asked whether he had been convicted of a drug-related felony that occurred after August 22, 1996. Petitioner indicated that he had. The following question asked Petitioner whether he had been convicted of such a felony more than once. Petitioner did not answer that question as he was not sure whether he had more than one or not. Exhibit A, pp. 7-8.

2. Petitioner's application was approved. Initially, he was approved to receive \$171 per month. However, the approval amount was subsequently reduced to \$100. Exhibit A, pp. 9-16.
3. On March 14, 2019, the Department issued to Petitioner two documents related to Petitioner's FAP case after the Department determined that Petitioner had two drug-related felonies. One, the Department issued to Petitioner a Notice of Case Action closing his FAP benefits case, effective April 1, 2019. Two, the Department issued to Petitioner an Intentional Program Violation Client Notice informing Petitioner that he was disqualified from receiving FAP benefits from April 1, 2019 through March 31, 2020 due to an alleged administrative hearing decision finding that he committed an intentional program violation. Notably, the Michigan Office of Administrative Hearings and Rules has no record of such a hearing decision. That Notice goes on to demand Petitioner pay back FAP benefits of \$366 that Petitioner allegedly received from June 1, 2015 through July 31, 2015.
4. On [REDACTED], 2019, Petitioner submitted a hearing request objecting to the Department's attempt to establish an overissuance of 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, Petitioner objects to the Department's efforts to establish and collect an alleged \$366 overissuance of FAP benefits that Petitioner allegedly received. The Department asserts that Petitioner had two drug-related felonies during a time when he was receiving FAP benefits.

When an ineligible client is issued benefits or an eligible client is issued more benefits than the client is entitled, the Department must attempt to recoup the overissuance. BAM 700 (October 2018), p. 1; 7 CFR 273.18. An individual who has been convicted of two or more felony drug offenses which occurred after August 22, 1996, is permanently disqualified from receiving FAP benefits. BEM 203 (May 2018), p. 4; 7 CFR 273.1(b)(7)(vii).

The Department closed Petitioner's case and asserts that he owes back money because he had two drug-related felony convictions. Yet at the hearing, the Department presented zero evidence to substantiate its allegation while Petitioner asserted that he believed he only had one such conviction. Thus, the Department's actions must be reversed for that very simple and basic reason.

In addition, the Department's actions have been taken wholly outside of the procedural framework established by law and policy. The Department imposed an intentional program violation disqualification without any hearing on the matter, as is required by law and policy. Instead, it simply declared without any opportunity to contest the matter that Petitioner committed an intentional program violation. Additionally, the March 14, 2019 Intentional Program Violation Client Notice asserts that Petitioner received a \$366 overissuance of FAP benefits from June 1, 2015 through July 31, 2015. Yet the Department's position at the hearing was that the overissuance it was attempting to establish was for the period from the October 4, 2018 application through the March 31, 2019 closure. A review of the Department's evidence and arguments leads to the conclusion that the Department came woefully short of meeting its burden of proving that Petitioner received anything that he was not entitled to.

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 case and sought to establish an overissuance of FAP benefits of \$366.

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;
2. Redetermine Petitioner's eligibility for FAP benefits;
3. Delete the alleged overissuance;
4. Delete the intentional program violation disqualification as there was no administrative hearing on the matter;
5. Follow Department policy with respect to the FAP; and

6. Notify Petitioner in writing of its decisions.

JM/cg



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-MI-CAP_SSPC
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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