



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 27, 2019  
MOAHR Docket No.: 19-011091  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Janice Spodarek

### **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 hearing was held on December 18, 2019, from Lansing, Michigan. Petitioner appeared unrepresented. [REDACTED] appeared as a witness. The Department of Health and Human Services (Department) was represented by Jackie Martin, ES worker, and Camile McGlothlin. APS.

### **ISSUE**

Did the Department properly fail to reopen Petitioner's FAP 29 days after the case closed at redetermination?

### **FINDINGS OF FACT**

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

1. At all relevant times prior to the action herein, Petitioner was a FAP recipient.
2. Pursuant to a redetermination, on August 5, 2019, and on September 4, 2019, Respondent requested verifications due September 4, 2019, and subsequently on September 16, 2019. All of the verifications were not delivered as of September 30, 2019.
3. On September 30, 2019, Petitioner's FAP case closed.
4. On October 29, 2019, the verifications were uploaded.

5. On September 18, 2019, the Department issued a notice that Petitioner's daughter was to be excluded as a FAP member on the basis of the time limited food stamp policy (TLFP), effective October 1, 2019. Unrefuted evidence of record is that Petitioner's daughter meets the TLFS policy for the academic school year of 2019-2020.
6. On October 4, 2019, Petitioner filed a hearing request.

### **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 purview of an Administrative Law Judge is to review the Department's action and to make a determination if the evidence of record supports that action taken by the Department. After the Department meets its burden of going forward, Petitioner has burden of proof to show that the action is not supported by the evidence and is contrary to law or policy. ALJs do not have any jurisdiction to deviate from law or policy due to individual circumstances

General policy and procedure applicable to the case here is found primarily in the BEM and BAM policies. Federal FAP regulations are found at 7 CFR 273.2, 273.3, 273.2.

In this case, there were a number of issues and competing actions which all converged at a similar point in time. First, the undersigned notes that there is no jurisdiction to review any actions that have taken place after an individual's request for hearing. Thus, the issue Petitioner raised regarding the FAP group composition as to the mother of the children in the FAP home is not being reviewed here. The Department can proceed with whatever notice or request for verification(s) regarding this individual. Once that process is complete, Petitioner would have a right to an administrative hearing, should he dispute the outcome of the Department's decision regarding the presence of the mother in the home.

With regard to verifications requested at redetermination, unrefuted evidence of record is that not all the requested verifications were returned by September 30, 2019, when the FAP case closed. However, Petitioner argued that under BAM 210 he had the right

to have his case reinstated if he delivered the verifications within 30 days of the benefit period:

### **Subsequent Processing**

If a client files an application for redetermination before the end of the benefit period, but fails to take a required action, the case is denied at the end of the benefit period. Proceed as follows if the client takes the required action within 30 days after the end of the benefit period:

- Re-register the redetermination application using the date the client **completed** the process.
- If the client is eligible, prorate benefits from the date the redetermination application was registered. BAM 210, page 22.

Thus, when Petitioner delivered the verifications on October 29, 2019, he had the right to have the case reinstated, but not retroactively, only from October 29, 2019, forward.

In addition, unrefuted evidence of record is that Petitioner's daughter is exempt from the TLFS for the duration of the 2019/2020 academic year, based on the verifications submitted.

For these reasons, the Department is reversed with regard to the reinstatement and the TLFS.

As to group composition, this ALJ makes no ruling, as such is premature.

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 did not act in accordance with Department policy when it failed to reinstate Petitioner's FAP case on October 29, 2019, and when it decided that the case could remain closed due to Petitioner's daughter's TLFS status.

### **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 case effective October 29, 2019, and
2. Keep Petitioner's daughter as part of the FAP group and continuing as meeting eligibility under the TLFS, and
3. Issue any supplemental benefits to Petitioner to which he may be entitled from October 29, 2019 and continuing, **IF OTHERWISE ELIGIBLE.**

JS/ml



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Janice Spodarek  
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**

Kimberly Kornoelje  
121 Franklin SE  
Grand Rapids, MI 49507

Kent (District 1) County DHHS – Via  
Electronic Mail

BSC3 – Via Electronic Mail

M. Holden – Via Electronic Mail

D. Sweeney – Via Electronic Mail

**Petitioner**

[REDACTED] – Via First Class Mail  
[REDACTED]  
[REDACTED] M [REDACTED]