



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: February 21, 2020
MOAHR Docket No.: 20-000373
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 telephone hearing was held on February 13, 2020, from Lansing, Michigan. Petitioner personally appeared unrepresented. The Department of Health and Human Services (Department) was represented by Amber Gibson, Hearings Facilitator.

ISSUE

Did the Department properly close Petitioner's FAP case?

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, Petitioner was a beneficiary of the FAP program.
2. Petitioner's case was scheduled for a redetermination on or about October/November 2019.
3. Petitioner uploaded her redetermination papers to the Department without success. Petitioner informed her worker of the problems and was instructed to upload a new application. On [REDACTED] 2019, Petitioner uploaded a new application. The Department's hearing summary states that the [REDACTED], 2019 application was used as a redetermination. Exhibit A.1.
4. Petitioner had a phone conversation with her worker on [REDACTED] 2019, which she understood was the interview required for the redetermination.

5. The Department testified that Petitioner's FAP case closed due to failure to complete the redetermination.
6. The Department's Hearing Summary gave inconsistent dates as to when Petitioner was notified of a FAP closure for purported failure to complete the interview, December 3, 2019, and January 23, 2020. There was no December 3, 2019 Notice of Case Action in the file. The most recent notice of Missed Appointment informs Petitioner to return the redetermination packet by December 08, 2011. The Department did not know why the year was 2011.
7. Petitioner's worker was not at the administrative hearing and was not available for testimony and/or cross-examination.
8. Petitioner contacted her worker and her worker's supervisor on multiple occasions.
9. On January 8, 2020, 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.

Department policy applicable to the case herein is found primarily in BAM 115, 130, 210, and 220. Corresponding federal regulations are found at 7 CFR 273.2.

First, it should be noted that the Department stipulated that there are no issues in this case regarding Petitioner's verifications; presumably all were delivered and not at issue.

The issue in this case deals with the Department's testimony that Petitioner's FAP case closed due to Petitioner's failure to attend a phone interview. In part, the Department submitted a Notice of Missed Appointment as evidence indicating that Petitioner needed to contact her specialist by "12/08/2011". The Department did not know why the letter contains a 2011 date.

As noted, the individual representing the Department at the administrative hearing did not have personal knowledge of this case. Petitioner raised a number of issues regarding her interaction with her worker, who was not present at the administrative

hearing for examination and/or cross-examination. Specifically, Petitioner indicated that she had reported problems with her access to the Department's computer system and in fact, had uploaded her redetermination papers timely, but the system failed to upload. Petitioner credibly testified that her worker informed her to upload a new application which would be considered her redetermination paperwork, verified by the hearing summary.

In addition, Petitioner indicated that there were a number of problems with the communications issued by the Department to Petitioner. Petitioner submitted evidence that she received a phone interview letter dated September 4, 2019, postmarked September 19, 2019, 16 days after the date of the letter. Exhibit I.3-4. A Verification Checklist (VC) dated August 30, 2019, postmarked September 6, 2019, with proofs due by September 9, 2019. Exhibit I.1-2. A September 4, 2019 telephone interview letter, postmarked October 8, 2019, over 30 days after the date on the letter. Exhibit A.5-6. A November 6, 2019 appointment notice letter, postmarked November 7, 2019, for Petitioner to be available November 13, 2019. Exhibit I.7-8. As noted however, Petitioner's worker was not available at the administrative hearing for testimony and/or cross examination.

Petitioner also credibly testified that she understood that a phone interview with her worker took place on [REDACTED], 2019. The Department's response at the administrative hearing was that the worker could not have conducted a phone interview until after it received the redetermination paperwork on the grounds that policy does not allow it, so the worker could not have done so on [REDACTED] 2019.

In essence, the Department's general response to Petitioner's claims was that the worker could not have deviated from policy, as policy does not allow it. This is precisely the reason that credible evidence is required, and, the reason that hearsay is generally not considered credible. A witness cannot attempt to prove a fact by citing that it must be true because the policy requires it. Put another way, a witness cannot prove a fact by arguing that a worker could not have deviated from the policy because the policy does not allow it. Circular reasoning will not prove a fact, as it attempts to cite the conclusion for proof of the premise. While the Department can send anyone to an administrative hearing it chooses to, it cannot expect that all witness' testimony will carry the same weight as the witness who has personal knowledge, who is subject to testimony and/or cross-examination.

Not only was Petitioner a credible witness, but the Department's own evidentiary packet was not inherently consistent. The Hearing Summary states in part that Petitioner FAP was denied on December 3, 2019, and in #2 at the top, that Petitioner was denied January 23, 2020. Both dates cannot be correct. Exhibit A.23 is a Notice of Missed Appointment that states that Petitioner must return the redetermination before December 8, 2011, eight years prior to the redetermination at issue herein. In addition, Petitioner submitted and testified to multiple communications where she was sent a VC and other letters postmarked days, or even a month after the date of the letter, and where the Department's mailings arrived after the due date or with very short notice.

Most important however, is where in a factually intense case such as the one here, Petitioner has the right to prevail where Petitioner's testimony is credible and the worker is not available for testimony and/or cross-examination. The Department representative's statement that she talked to the worker, under these facts, is hearsay. The Department's statement that the policy must have been followed as policy requires is nonsense; there would be no reason for administrative hearings if there was no dispute regarding the facts.

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 closed Petitioner's FAP case.

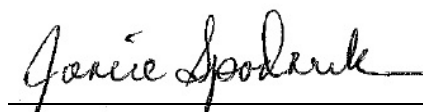
DECISION AND ORDER

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 from the date of closure, and
2. Issue any supplemental benefits to Petitioner to which she is owed from the date of closure, and
3. Reprocess Petitioner's FAP as required under policy and procedure if necessary, in order to make any further determinations regarding Petitioner's FAP eligibility under the redetermination policy and procedure.

JS/ml



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

Ingham County DHHS – Via Electronic
Mail

M. Holden – Via Electronic Mail

D. Sweeney – Via Electronic Mail

Petitioner

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