



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: July 23, 2020
MOAHR Docket No.: 20-003688
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 22, 2020 from separate locations in Michigan due to the COVID-19 pandemic and stay at home order. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearings Facilitator.

ISSUE

Did the Department properly reduce Petitioner's Food Assistance Program (FAP) benefits due to noncompliance with Office of Child Support (OCS) requirements?

FINDINGS OF FACT

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

1. As a result of an accident in 2019, Petitioner has been undergoing physical therapy for an injury to her leg and needs a second surgery.
2. As a result of the injury, Petitioner is unable to drive.
3. On [REDACTED] 2020, the Department received Petitioner's Application for FAP benefits.
4. An interview was completed, but there was no notation of a discussion regarding child support requirements.

5. In March of 2020, Governor Whitmer issued an Executive Order requiring all individuals to stay home except in limited essential circumstances.
6. On April 15th or 16th of 2020, the Department issued a Notice of Case Action to Petitioner informing her that she had been disqualified from FAP due to noncooperation with OCS requirements.
7. On May 26, 2020, the Department received Petitioner's request for hearing disputing the denial 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 disputes the denial of FAP benefits based upon noncooperation with OCS requirements. In FAP cases, the custodial parent or alternative caretaker of a child must comply with all requests for action or information needed to establish paternity and/or obtain child support on behalf of children for whom they receive assistance, unless a claim of good cause for not cooperating has been granted or is pending. BEM 255 (January 2020), p. 1. Caretakers include adults acting as a parent to a dependent child by providing physical care and supervision. BEM 212 (July 2019), p. 2. Cooperation includes contacting the support specialist when requested; providing all known information about the absent parent; appearing at the office of the prosecuting attorney when requested; and taking any actions needed to establish paternity and obtain child support. BEM 255, p. 9. In FAP cases, failure to cooperate without good cause results in disqualification of the individual who failed to cooperate from the FAP group. BEM 255, p. 14. The individual and their needs are removed from the FAP group for a minimum of one month; the remaining eligible group members would continue to receive FAP benefits. *Id.*

To begin the process, the Department is required to refer clients who have a legal parent absent from the home to the OCS for child support action by completing the Absent Parent Logical Unit of Work and certifying eligibility of benefits. BEM 255, p. 8.

The parties dispute whether Petitioner was ever referred to OCS prior to the issuance of the Notice of Case Action in April 2020. The Department asserts that Petitioner was referred to OCS in 2017 and noncooperation was established on August 29, 2017 with letters having been sent to Petitioner on August 21, 2017 and September 9, 2017. Petitioner testified that she never received any of these documents and that the first time she became aware of the child support requirement was in April 2020 after receiving the Notice of Case Action. The Department did not provide any supporting documentation to support its case. The only documentation provided was a Notice of Case Action unrelated to the facts of this case. Supporting documentation is important in this case because of recent policy changes as a result of the COVID-19 pandemic. As a result of the pandemic, the Department has changed policy with respect to child support requirements. The directive states in part:

In response to the COVID-19 pandemic and reduced child support services statewide, the Office of Child Support (OCS) is currently doing everything possible to avoid sending *new* noncooperation determinations to Bridges... if staff find that a noncooperation sanction for child support is determined inappropriate based on the family's current situation, OCS supports MDHHS Specialists [making requests to] remove the noncooperation determination.

Economic Stability Administration Memorandum ESA 2020-11, *COVID 19 Child Support Non-Cooperation* (March 19, 2020) (*emphasis added*). The Department failed to provide supporting documentation that the determination of noncooperation had existed since 2017 and its statements alone are insufficient as Petitioner disputes ever having been placed in noncooperation or having been notified of requirements to contact OCS until April 2020. Since the Department failed to establish that this was not a *new* circumstance, the directive from the above cited memo applies. Furthermore, since the Department did not provide any supporting documentation that Petitioner was notified of the requirement to contact OCS before the Notice of Case Action, the Department must apply the directive from the memo. Petitioner is unable to drive and the stay home executive order has limited her ability to comply with child support requirements; the requirement should be waived based upon her household circumstances.

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 placed Petitioner in noncooperation with OCS requirements and disqualified her from FAP.

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 FAP Application dated [REDACTED] 2020;
2. If otherwise eligible, issue supplements to Petitioner for FAP benefits not previously received; and,
3. Notify Petitioner in writing of its decision.



AM/tm

Amanda M. T. Marler
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

Susan Noel
26355 Michigan Ave
Inkster, MI
48141

Petitioner



cc: FAP: M. Holden; D. Sweeney
AP Specialist-Wayne County