



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], MI [REDACTED]

Date Mailed: January 19, 2021
MOAHR Docket No.: 20-007727
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 January 14, 2021, from Lansing, Michigan. The Petitioner was represented by Petitioner [REDACTED] [REDACTED]. The Department of Health and Human Services (Department) was represented by Liane Scupholm (Hearing Facilitator).

Department's Exhibits pages 1-19 were admitted as evidence.

ISSUE

Did the Department properly cancel Petitioner's Food Assistance Program (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. On September 23, 2020, [REDACTED] submitted a completed DHS-1010 Redetermination form (Exhibit 1 pp. 3-7).
2. A telephone interview was scheduled for October 1, 2020, at 10:30 am (Exhibit 2 pg. 8).
3. The Eligibility Specialist attempted to contact Petitioner at the appointed day and time to conduct the interview (Exhibit 3 p. 9).
4. Petitioner did not pick up the phone because it came from a private number that he did not recognize.

5. On October 1, 2020, a missed appointment notice was mailed to Petitioner for failing to complete the interview indicating that Petitioner had to complete redetermination by October 31, 2020 (Exhibit 4 p. 10).
6. On November 1, 2020, Petitioner's case was closed.
7. On November 18, 2020, a DHS-1605 Notice of Case Action was mailed to Petitioner for the denial of his food assistance for failing to complete the redetermination interview (Exhibit 5 pp. 11-15).
8. On December 1, 2020, Petitioner filed a hearing, over the phone, to contest the termination of his food assistance program case.
9. On December 9, 2020, the Assistance Payments Supervisor, held a case conference with Petitioner. Petitioner contends that he called many times after the missed interview but never received a return call from the worker.
10. The Department contended that the caseworker made several additional attempts to reach Petitioner for the interview but was unsuccessful.
11. On December 15, 2020, the Michigan Office of Administrative Hearings and Rules received a Hearing Summary and attached documents.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Department must establish its case by a preponderance of the evidence. A preponderance of evidence is evidence which is of a greater weight or more convincing than evidence offered in opposition to it. It is simply that evidence which outweighs the evidence offered to oppose it *Martucci v Detroit Commissioner of Police*, 322 Mich 270; 33 NW2d 789 (1948).

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.

Pertinent Department policy dictates:

Clients have the right to contest a Michigan Department of Health and Human Services (MDHHS) decision affecting eligibility or benefit levels whenever they believe the decision is incorrect. MDHHS provides an administrative hearing to review the decision and determine its appropriateness in accordance to policy. This item includes procedures to meet the minimum requirements for a fair hearing. Efforts to clarify and resolve the client's concerns must start when the hearing request is received and continue through the day of the hearing. BAM 600, page 1.

The Michigan Office of Administrative Hearings and Rules (MOAHR) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits, or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service.
BAM 600 (January 1, 2020), page 5.

A timely hearing request is a request received by the department within 10 days of the date the notice of case action was issued. When the 10th calendar day is a Saturday, Sunday, holiday, or other non-workday, the request is timely if received by the following workday. While waiting for the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. Upon receipt of a timely hearing request, reinstate program benefits to the former level for a hearing request filed because of a negative action. For FAP only, these actions apply only if the benefit period has not expired. BAM 600, pages 25-26.

All Programs Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements.

Obtain verification when:

- Required by policy. Bridges Eligibility Manual (BEM) items specify which factors and under what circumstances verification is required.
- Required as a local office option. The requirement must be applied the same for every client. Local requirements may not be imposed for Medicaid Assistance (MA).
- Information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party.

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. (Bridges Administrative Manual (BAM) 130, page 1)

For FAP, do not deny an application if the client has not participated in the initial interview until the 30th day after the application date even if he/she has returned all required verifications. When denying cases on the 30th day, navigate to the Program Request Details screen and select Failed to Attend Food Assistance Intake Interview as the reason for the denial. The initial interview must be scheduled as an in-person appointment, phone appointment or home call. BAM 115, page 5.

Reinstatement restores a closed program to active status without completion of a new application. Closed programs may be reinstated for any of the following reasons:

- Closed in error.
- Closed-correct information not entered.
- Timely hearing request.
- Redetermination packet not logged in.
- Hearing decision ordered reinstatement.
- Complied with program requirements before negative action date. BAM 205, page 1

In the instant case it is undisputed that Petitioner returned all verification documents in a timely manner. The Department contacted him from a blocked or personal number which he did not recognize so he did not answer the phone.

In this case, Petitioner alleged that he called the case worker on several different occasions. He testified on the record that he had records of calls to the caseworker that he made on October 1, October 2, October 7, and October 9, 2020.

Moreover, the person who actually worked on this case was not present to testify at the hearing and did not provide case notes that Petitioner attempted to contact her or that she attempted to contact Petitioner after the initial case note on October 1, 2020. There is no evidence on the record to rebut Petitioner's evidence. The caseworker also allowed the case to close and did not bother to send notice until nearly a month after the case closed. This Administrative Law Judge finds Petitioner's testimony to be credible. It

should also be noted for the record that Petitioner had completed all other portions of his redetermination and provided them to the Department.

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 act in accordance with Department policy when it cancelled Petitioner's Food Assistance program case. The Department failed to satisfy its burden of proof.

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 Food Assistance Program case to the date of closure;
2. Contact Petitioner and conduct the proper interview with Petitioner;
3. If Petitioner is otherwise eligible, pay to Petitioner any FAP benefits he is entitled to for the months for November and December 2020.

LL/hb



Landis Lain
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

Calhoun County via electronic mail

BSC3 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]