



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

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Date Mailed: April 29, 2019
MOAHR Docket No.: 19-003140
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 April 25, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Natalie McLaurin, hearing facilitator.

ISSUE

The issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) eligibility for April 2019.

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 an unspecified date, MDHHS requested an administrative hearing to establish that Petitioner received an overissuance of FAP benefits due to an intentional program violation (IPV).
2. On an unspecified date, a hearing was held concerning the MDHHS request to establish an IPV disqualification against Petitioner. Petitioner did not attend the hearing.
3. On an unspecified date, the Michigan Office of Administrative Hearings and Rules issued a decision ordering MDHHS to impose a 1-year IPV disqualification against Petitioner related to \$ [REDACTED] in overissued FAP benefits.

4. As of February 2019, Petitioner was an ongoing recipient of FAP benefits. Petitioner also received \$[REDACTED] month in employment income.
5. As of February 2019, Petitioner was a member of a household which included his living-together partner (hereinafter, "LTP").
6. As of February 2019, Petitioner reported the following expenses to MDHHS: \$0 dependent care expenses, \$0 child support expenses, \$0 medical expenses for his LTP, responsibility for heat payment, and housing expenses of \$[REDACTED] month.
7. As of February 2019, Petitioner's LTP received \$[REDACTED] month in Retirement, Survivors and Disability Insurance (RSDI), \$[REDACTED] in federally-issued Supplemental Security Income (SSI), and \$42 every three months for state-issued SSI. LTP's federally-issued SSI was reduced by \$50 due to recoupment which Petitioner stated was not due to fraud.
8. On February 25, 2019, MDHHS imposed an IPV disqualification against Petitioner from March 2019 through February 2020. Exhibit A, pp. 4-6.
9. On February 25, 2019, MDHHS terminated Petitioner's FAP eligibility beginning April 2019 due to excess income. The determination factored a group size of 1 person and unearned income of \$[REDACTED] Exhibit A, pp. 7-11.
10. On March 25, 2019, Petitioner requested a hearing the closure of FAP benefits beginning April 2019. Exhibit A, pp. 2-3.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a closure of FAP benefits beginning April 2019. MDHHS presented a Notice of Case Action dated February 25, 2019, stating that Petitioner's eligibility was terminated due to excess income. Exhibit A, pp. 21-18. The Notice of Case Action dated February 27, 2019, included a summary of all relevant FAP budget factors. During the hearing, all relevant budget factors were discussed. Petitioner only disputed group composition and unearned income.

MDHHS factored a group composition of 1 person (Petitioner's LTP). Petitioner countered that MDHHS wrongfully excluded himself as a group member and that

MDHHS should have factored a group size of 2 persons. Petitioner's testimony acknowledged that MDHHS requested a hearing to establish an IPV against Petitioner, Petitioner failed to attend the hearing, and the resulting hearing decision found that Petitioner committed an IPV justifying imposing a 1-year disqualification period.

Petitioner's primary intent in requesting a hearing on March 25, 2019, was to challenge the IPV disqualification by providing good cause for not attending the previously held IPV hearing. The problem with Petitioner's intent is that the process of the IPV disqualification was under a different docket number and separate administrative hearing jurisdiction. To appeal the administrative order disqualifying Petitioner, Petitioner should have requested an appeal to circuit court or requested a rehearing and/or reconsideration from MOAHR within 30 days of the issuance of the decision (as instructed on the decision). Petitioner cannot challenge the separate matter of IPV disqualification by requesting a hearing with MDHHS. Thus, Petitioner's challenge to the IPV disqualification will not be considered.

A notice of IPV dated February 25, 2019, stated that MDHHS disqualified Petitioner from receiving FAP benefits from March 2019 through February 2020. Disqualified persons are ineligible for FAP. BEM 212 (April 2019) p. 8. Petitioner should not be factored as a group member in the determination of Petitioner's FAP eligibility for April 2019 due to IPV disqualification. As the only household members were Petitioner and LTP, MDHHS properly factored a group size of 1 person in determining Petitioner's FAP eligibility for April 2019.

Petitioner also disputed the \$[REDACTED] month in unearned income budgeted for his LTP. Specifically, MDHHS budgeted \$[REDACTED] in RSDI, \$[REDACTED] in federally-issued SSI, and \$[REDACTED] in state-issued SSI. During the hearing, MDHHS checked its database which indicated that LTP received only \$[REDACTED] month in federally-issued SSI due to recoupment by SSA.

Bridges counts the gross amount of current SSA-issued SSI as unearned income. BEM 503 (July 2017), p. 36. In determining gross income, amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income unless the overpayment is due to an IPV. BEM 500 (July 2017), p. 6. IPV means there was a finding of fraud or an agreement to repay in lieu of prosecution. BEM 503 (July 2017), p. 33. MDHHS counts recouped SSI only if IPV information is volunteered by the SSI recipient or other reliable source. *Id.*

Petitioner denied that LTP's SSI was reduced due to fraud. MDHHS testimony admitted there was no reliable source that LTP's federally-issued SSI was reduced due to an IPV. Given the evidence, MDHHS should not have factored the recouped SSI in determining Petitioner's FAP eligibility for April 2019. The remedy for Petitioner is for MDHHS to redetermine Petitioner's FAP eligibility based on the \$[REDACTED] month amount of federally-issued SSI. Petitioner should be advised that an updated determination may again result in benefit ineligibility.


DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's FAP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's FAP eligibility beginning April 2019 subject to the finding that LTP's gross federally-issued SSI benefit is \$[REDACTED] month;
- (2) Issue a supplement of any benefits improperly not issued.

The actions taken by MDHHS are **REVERSED**.

CG/jaf



Christian Gardocki
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

Kathleen Verdoni
MDHHS-Saginaw-Hearings

Petitioner

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