



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: October 11, 2019
MOAHR Docket No.: 19-009052
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 October 9, 2019 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Amber Gibson, Hearings Facilitator. During the hearing, a 20-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-20.

ISSUE

Did the Department properly determine Petitioner's eligibility for Food Assistance Program (FAP) benefits, effective August 1, 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. Petitioner was an ongoing FAP recipient. Her benefits were based in part on housing costs of \$550 per month and the heat and utility (h/u) standard.
2. On June 3, 2019, the Department issued to Petitioner a Mid-Certification Contact Notice. Exhibit A, pp. 4-6.
3. Petitioner completed the form and returned it to the Department on July 1, 2019. On the form, Petitioner indicated that she had a change in housing expenses. Exhibit A, pp. 4-6.

4. On August 1, 2019, Petitioner returned to the Department a Shelter Verification form wherein Petitioner reported that her housing costs had gone down to \$205 per month. It was further reported that Petitioner's rent included heating costs. Petitioner was additionally still responsible for electric, which included the costs associated with her central air conditioning. Exhibit A, pp. 7-8.
5. On August 7, 2019, the Department issued to Petitioner a Notice of Case Action reducing Petitioner's monthly FAP benefits to \$39. Petitioner's new rate of FAP benefits was determined, in part, on monthly housing costs of \$205 and the removal of the h/u standard. Exhibit A, pp. 16-20.
6. On August 7, 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's action.

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 objected to the Department's reduction of her monthly FAP benefits, effective August 1, 2019. The reduction resulted largely from the removal of the h/u standard and a reduction in Petitioner's housing costs. The housing costs were appropriately reduced. However, Petitioner was still responsible for providing her own electric, including the electricity needed to operate her central air conditioning.

During the hearing, the Department witness testified that Petitioner was found to be not eligible for the h/u standard because Petitioner's verified expenses do not include any responsibility to pay for heating costs. While it is true that there is no evidence that Petitioner is responsible for heating costs, that does not preclude Petitioner from having the h/u standard applied to her case.

The h/u standard covers all heating and utility costs, including cooling. BEM 554 (April 2019), p. 15. FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if they verify they have the responsibility to pay for non-heat electric. BEM 554, p. 16. Petitioner credibly testified that she paid for cooling and was responsible for non-heat electric and provided all the information she was asked for on the verification forms. Thus, Petitioner should have had the h/u standard applied to the

equation. The Department's failure to factor the h/u standard into the equation in determining Petitioner's FAP benefits resulted in a faulty decision. Thus, the Department must redetermine Petitioner's FAP benefits from August 1, 2019, ongoing.

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 determined Petitioner's FAP eligibility, August 2019, ongoing.


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 eligibility for FAP benefits from August 1, 2019, ongoing, ensuring that all allowable expenses are applied, including the h/u standard for which Petitioner qualifies;
2. If Petitioner is found to be eligible for additional benefits, promptly issue to Petitioner a supplement; and
3. Notify Petitioner in writing of its decisions.

JM/cg



John Markey
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

Via Email:

MDHHS-Wayne-57-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED], MI [REDACTED]