



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: October 4, 2019  
MOAHR Docket No.: 19-009443  
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 September 26, 2019, from Lansing, Michigan. Petitioner personally appeared unrepresented. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearings Facilitator. The worker with personal knowledge of this case failed to appear for the administrative hearing.

### **ISSUE**

Did the Department carry out ALJ Ellen McLemore's Decision and Order of July 29, 2019 regarding Petitioner's FAP benefits?

### **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 [REDACTED], 2019 petitioner applied for FAP, CDC and MA benefits.
2. On May 30, 2019 the Department denied Petitioner's CDC application. On June 14, 2019 Petitioner filed a hearing request on the grounds that the Department failed to properly process her FAP, CDC, and MA applications.
3. On July 18, 2019 an administrative hearing was held with ALJ Ellen McLemore, MOAHR Docket No.: 19-006489. At the hearing Petitioner withdrew her MA appeal. On July 19, 2019 ALJ McLemore reversed the Department and ordered the Department to reinstate Petitioner's applications, reprocess FAP and CDC

benefits, issue any supplemental benefits Petitioner is entitled to, and notify Petitioner of its FAP and CDC decisions in writing.

4. On September 4, 2019 Petitioner filed a hearing request on the grounds that the Department failed to carry out ALJ McLemore's decision.
5. On September 26, 2019 the present administrative hearing was held. Evidence of record indicates that the Department has all necessary income and expenses but failed to reprocess the case or issue notices.
6. Petitioner withdrew her CDC application at the present hearing as she could not work without day care and the Department failed to process her application during the summer months when she needed the CDC.
7. The worker who has personal knowledge of this case was asked to attend the administrative hearing but failed to do so.

### **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, unfortunately for Petitioner, Petitioner now has withdrawn her original MA and CDC application as she requested assistance in May 2019, as the Department failed to process the applications. Here, Petitioner requests here that her FAP benefits from her May 2019 application date and continuing be processed as ordered by ALJ McLemore in the Decision and Order of July 19, 2019 MOAHR Docket No: 19-006489.

Here, the Department has failed to meet its burden of going forward as the Department representative stated at the administrative hearing that she could not explain the action(s) that did or did not take place here. What is clear is that the Department stated that the Department failed to carry out ALJ McLemore's order of MOAHR Docket No.: 19-006489. Petitioner has the right to have the order carried out. Evidence indicates that Petitioner credibly testified that the worker in this matter failed to process her verifications. In addition, the Department representative indicated that she could not explain the action taken here and thus, could not meet its burden of going forward. In addition, the worker who has personal knowledge of this case and who was charged

with the duty of carrying out ALJ McLemore's decision failed to appear at the administrative hearing despite the Department's request. As the Department could not explain the facts and the actions taken, not at ALJ McLemore's hearing nor in the present hearing, it will be ordered that a supervisor should reprocess this case in accordance with ALJ McLemore's order and in accordance with federal and state law.

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 processed Petitioner's May 3, 2019 application, and failed to properly carry out ALJ McLemore's July 19, 2019 Order, MOAHR Docket No.: 19-006489.

It is noted that there was no evidence presented at the administrative regarding a September 3, 2019 hearing where allegedly Petitioner failed to appear. Petitioner's file contains an Order of Dismissal issued to a different individual at a different address than that of Petitioner's regarding a failure to appear at a September 3, 2019 hearing for the other claimant, not relevant to Petitioner or Petitioner's case.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **REVERSED**.

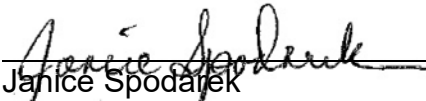
THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Carry out ALJ Ellen McLemore's order in the July 19, 2019 MOAHR Docket No.: 19-006489 Decision and Order with regard to Petitioner's FAP benefits which includes doing the following pursuant to ALJ McLemore's Order: 1) Reinstate and reprocess Petitioner's May 3, 2019 FAP application; 2) if Petitioner is eligible for FAP benefits, issue supplements she is entitled to receive in accordance with Department policy; and 3) Notify Petitioner of its FAP decision in writing.
2. Assign this case to a Department supervisor to carry out the ALJ McLemore's July 19, 2019 order, and
3. Notify Petitioner in writing of her FAP edibility pursuant to her May 3, 2019 FAP application, and

- Petitioner shall retain a right to another administrative hearing for 90 days from the date on the new notice pursuant to the order herein, should she dispute the outcome and/or calculation of her FAP benefits.

**IT IS SO ORDERED.**

JS/nr

  
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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**

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Wayne 19 County DHHS- via electronic  
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**Petitioner**

