



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: October 30, 2019
MOAHR Docket No.: 19-009483/19-010342
Agency No.: ██████████
Petitioner: ██████████

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 23, 2019 from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearings Facilitator. Arabic interpretation services were provided by ██████████. During the hearing, a 29-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-29.

ISSUE

Did the Department properly deny Petitioner's ██████████, 2019 application for State Emergency Relief (SER) assistance with paying back taxes?

Did the Department properly process Petitioner's ██████████, 2019 application to add his four children to his Food Assistance Program (FAP) benefits 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. Petitioner was an ongoing FAP recipient in a group of one.
2. Petitioner has four children. The four children were active beneficiaries of various Department benefits in a group with their mother.

3. On [REDACTED], 2019, Petitioner submitted to the Department an application to add the four children to his FAP case and for SER benefits for assistance paying a tax bill for a home that had a tax arrearage of \$[REDACTED] Exhibit A, p. 6.
4. On August 22, 2019, the Department issued to Petitioner a State Emergency Relief Decision Notice informing Petitioner that his SER application was denied. Exhibit A, p. 29.
5. On August 22, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that his application to add his four children to his case was denied. Petitioner was approved for ongoing FAP benefits in a group of one. Exhibit A, pp. 13-15.
6. On September 4, 2019 and September 16, 2019, Petitioner submitted to the Department requests for hearing objecting to the Department's denial of his SER application and refusal to add his children to his FAP case.
7. During the October 23, 2019 hearing, the parties stipulated to the consolidation of the two cases initiated by Petitioner's two hearing requests, 19-009483 and 19-010342. The two cases were consolidated under Michigan Administrative Code, Rule 792.10118(b).

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).

In this case, Petitioner submitted to the Department an [REDACTED], 2019 application for SER assistance with paying his back tax bill and to add his four children to his FAP case. The Department denied Petitioner's SER application due to a finding that the request was for too much money and that he was not eligible anyways due to the fact that his home was not yet in foreclosure. The Department denied Petitioner's application to add his children to his FAP case because the children were already active on another benefits case under the mother of the children.

SER DENIAL

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

Petitioner's ██████████, 2019 application for SER benefits was denied via an August 22, 2019 State Emergency Relief Decision Notice. The denial was based on the facts that there was no foreclosure in progress and that the amount requested (\$3,986.94) was above the program limits.

SER helps to prevent loss of a home if no other resources are available and the home will be available to provide safe shelter for the SER group in the foreseeable future. ERM 304 (October 2018), p. 1. Home ownership services payments will only be issued to save a home threatened with loss due to: (1) mortgage foreclosure; (2) land contract foreclosure; (3) tax foreclosure or sale; (4) court-ordered eviction of a mobile home from land or a mobile home park; or repossession for failure to meet an installment loan payment for a mobile home. ERM 304, pp. 1-2. The Department does not authorize SER payments if the total amount of tax arrearage for all years exceeds \$2,000. ERM 304, p. 5.

In this case, it is not necessary to analyze whether there was an active emergency because the amount of the tax arrearage required the Department to deny the application. Petitioner's application included tax documentation showing that Petitioner's property tax arrearage was substantially greater than \$2,000. Thus, the Department had no option but to deny Petitioner's application.

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 acted in accordance with Department policy when it denied Petitioner's application for SER benefits to help with his property taxes.

DENIAL OF REQUEST TO ADD CHILDREN TO FAP GROUP

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.

Petitioner objected to the Department's denial of his request to add his four children to his FAP case. During the hearing, Petitioner testified that the children are with him almost every single day and sleep at his home four nights per week. The Department denied the request because the children were already active on their mother's benefits case.

Household composition is a relevant eligibility-related factor for determining FAP eligibility. BEM 212 (July 2019), p. 1. A FAP group includes all individuals who live together and prepare food together. BEM 212, pp. 1-2. When a child spends time with multiple caretakers who do not live together, the Department must determine a primary

caretaker. BEM 212, p. 3. The child is always placed in the FAP group of the primary caretaker. BEM 212, p. 3. If primary caretaker status is questionable or disputed, verification is needed, and both caretakers must be allowed to provide evidence supporting his or her claim. BEM 212, p 4. A re-evaluation regarding primary caretaker status is needed whenever a second caretaker applies for assistance for the same child. BEM 212, p. 5.

Petitioner's application for FAP benefits for himself and his four children included an assertion that the four children were members of his household and that he was their primary caretaker. Rather than denying Petitioner's application because the children were already active on another case, the Department had an obligation to follow Department policy regarding disputes concerning primary caretaker status. The Department failed to follow the process, depriving Petitioner of the opportunity to substantiate his allegation that the circumstances had changed.

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 summarily rejected Petitioner's assertion that he was the primary caretaker of his four children.

DECISION AND ORDER

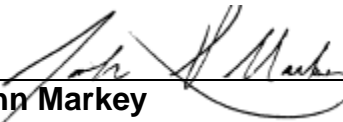
Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the SER denial and **REVERSED IN PART** with respect to FAP.

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. Reprocess Petitioner's application for FAP benefits for himself and his four children;
2. Follow Department policy regarding resolving disputes concerning primary caretaker status by giving both Petitioner and the children's mother the opportunity to verify their positions;
3. Determine whether Petitioner is the primary caretaker with respect to each of the children;
4. Determine Petitioner's eligibility for FAP benefits from the date of application;
5. If Petitioner is eligible for additional benefits, ensure that a prompt supplement is issued; and

6. Notify Petitioner in writing of its decisions.

JM/tm



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

DHHS

Susan Noel
26355 Michigan Ave
Inkster, MI
48141

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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