



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: November 18, 2019
MOAHR Docket No.: 19-011196
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 hearing was held on November 13, 2019, from Lansing, Michigan. Petitioner personally appeared and testified unrepresented. The Department of Health and Human Services (Department) was represented by Melisa Kingsley, APW.

ISSUE

- 1) Did the Department properly close Petitioner's Food Assistance Case (FAP) case effective August 1, 2019, and
- 2) Did the Department properly deny Petitioner's [REDACTED] 2019, FAP reapplication, and
- 3) Did the Department properly process Petitioner's medical expenses for her FAP budget?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all relevant times, Petitioner has been a FAP recipient for herself and five children. Petitioner has two disabled children with many medical expenses that are out of pocket.
2. The Department has only allowed Petitioner to deduct pharmacy bills on her FAP budget.

3. Petitioner's FAP case was scheduled for redetermination in June 2019. The Department issued a verification checklist with verifications due by July 5, 2019. Petitioner had until the end of the month, July 31, 2019, to turn in the verifications.
4. On July 31, 2019, Petitioner uploaded the requested verifications into Bridges.
5. On [REDACTED], 2019, Petitioner reapplied for FAP. At the interview, Petitioner reported that her son was beginning employment, part time, at \$ [REDACTED] per hour. Petitioner's son averaged about 6 hours per week; the Department budgeted 25 hours per week.
6. On August 30, 2019 the Department denied Petitioner's application for excess income.

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, applicable policy is found at BAM 130, 220; BEM 500, 501, 503, 505, 550, and 554. Corresponding federal regulations are found at 7 CFR 273.10, 273.2(f)(iv), 273.9, 273.10, and 273.11.

Here, Petitioner's worker who had personal knowledge of this case was not at the administrative hearing and not available for examination or cross-examination. The Department testified that individuals' who have personal knowledge of the facts are "not required" to attend the administrative hearing in the Ingham County DHHS.

This case was very factually intensive, making a factual development difficult without Petitioner's worker. Unrefuted evidence is that Petitioner uploaded the requested verifications by the July 31, 2019 due date pursuant to her redetermination, verified by a Bridges entry. Based on these facts, the closure of Petitioner's FAP case effective August 1, 2019, pursuant to Petitioner's redetermination cannot be upheld and must be reversed. Thus, with regards to Issue 1, the FAP closure effective August 1, 2019 was not correct as it is not supported by the evidence.

Regarding Petitioner's reapplication, the Department budgeted Petitioner's son's income at 25 hours per week at \$ [REDACTED] per hour. Petitioner testified that she did not represent that her son was working 25 hours per week, and in fact had pay stubs with her at the administrative hearing to show that her son did not even begin working until August 20, 2019, and averaged approximately 6.43 hours per week. Thus, with regards to Issue 2, the Department did not correctly budget Petitioner's household income in the FAP budget which resulted in the incorrect denial of FAP at reapplication due to excess income.

Regarding medical expenses, federal and state law allows for certain medical expenses in addition to pharmacy drugs, to be deducted on the FAP budget. Petitioner was not given the opportunity to do so. The Department has failed to follow federal and state law in failing to give Petitioner the opportunity to utilize medical expense deductions on her FAP allotment. Thus, the evidence does not support the action taken on Issue 3.

Here, Petitioner was a credible witness. In addition, the Department representative at the hearing did not dispute Petitioner's representations, and in fact, agreed with Petitioner; the Department representative agreed to review Petitioner's case. Unrefuted evidence of record is that the Department failed to follow federal and state law on all three issues.

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 closed Petitioner's FAP case, when it denied Petitioner's FAP reapplication, and when it failed to process Petitioner's medical expenses on her FAP budget.

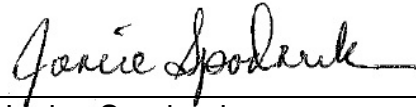
DECISION AND ORDER

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 TEN DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Petitioner's FAP case effective with the August 1, 2019 closure and continuing her benefits, and
2. Reprocess Petitioner's FAP benefits incorporating Petitioner's son's new job beginning August 20, at 6.5 hours per week at \$ [REDACTED] per hour, and
3. Give Petitioner ten days with at least one extension opportunity to submit any allowed medical expenses for her FAP budget, and

4. Reassess Petitioner's FAP eligibility utilizing allowable FAP medical expense deductions, and
5. Issue written notice to Petitioner as to the outcome of the Department's reprocessing of Petitioner's eligibility, along with her right to a hearing for 90 days from the date of the new notice, and
6. Issue any supplemental benefits to Petitioner to which she may be entitled.



JS/ml

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

Amber Gibson
5303 South Cedar
P.O. BOX 30088
Lansing, MI 48911

Ingham County DHHS – Via Electronic
Mail

M. Holden – Via Electronic Mail

D. Sweeney – Via Electronic Mail

Petitioner

[REDACTED] – Via First Class Mail
[REDACTED] MI [REDACTED]