



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR



Date Mailed: November 18, 2019  
MOAHR Docket No.: 19-011324  
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 November 13, 2019 from Detroit, Michigan. Petitioner appeared and represented herself. Also appearing on behalf of Petitioner was Petitioner's son, [REDACTED]. The Department of Health and Human Services (Department) was represented by Demetria Davis, Assistance Payments Supervisor. 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 reduce Petitioner's monthly 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 recipient of FAP benefits with a certified benefit period ending August 31, 2019.
2. Through the end of July 2019, Petitioner's verified shelter expense of \$410 was included in the budget used to determine Petitioner's monthly FAP allotment.
3. On July 24, 2019, Petitioner reported to the Department that her monthly shelter expenses increased to \$435. However, Petitioner's shelter remained the same.

4. On July 30, 2019, the Department issued to Petitioner a Shelter Verification form. Petitioner was instructed to have her landlord fill out the form and return it to the Department by August 9, 2019. Exhibit A, pp. 10-11.
5. The Department immediately removed the verified shelter expense from Petitioner's FAP budget, effective August 1, 2019. The removal of the shelter expense from Petitioner's FAP budget resulted in Petitioner's FAP allotment for August 2019 to be substantially reduced.
6. The Department did not at any time issue a negative case action notice to Petitioner to inform her of the reduction in her monthly FAP amount for August 2019. Rather, Petitioner found out when she attempted to use her EBT card.
7. On September 25, 2019, the Department received the completed Shelter Verification form. Exhibit A, pp. 10-11.
8. On September 26, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her FAP benefits would increase, effective October 1, 2019. The increase was caused primarily by the Department's decision to return the shelter expense to the budget, albeit at a slightly higher amount of \$435. Exhibit A, pp. 12-16.
9. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's actions.

### **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 was an ongoing recipient of FAP benefits from the Department with a benefit period certified through August 31, 2019. Prior to the action challenged in the instant case, Petitioner's FAP benefits budget took into consideration Petitioner's verified shelter expense of \$410 for her rent at her Center Line, Michigan apartment. On July 24, 2019, Petitioner reported to the Department that her shelter expense had increase by \$25 from \$410 to \$435. On July 30, 2019, the Department issued a Shelter

Verification form to Petitioner. Petitioner was instructed to fill out the form and return it to the Department by August 9, 2019. The Department did not receive the completed Shelter Verification form until sometime in September 2019.

As a result of the Department not receiving the verifications, the Department removed the old verified shelter expense from the budget, causing a reduction to Petitioner's monthly FAP allotment from \$█ to \$█ effective August 1, 2019. Thus, just eight days after receiving the report of the increase in shelter expenses and before the deadline for providing the verifications, the Department took negative action by removing the shelter expense and reducing Petitioner's FAP benefits. Petitioner objects to the reduction of her monthly FAP benefits, effective August 1, 2019, which occurred as a result of the Department's removal of Petitioner's verified shelter expense from the FAP budget.

The Department factors certain expenses into the FAP budget to determine benefit levels. BEM 554 (April 2019), p. 1. Shelter expenses, including housing expenses such as rent, are considered if they meet certain criteria. BEM 554, pp. 13-15. Amongst those criteria are the requirements that someone in the FAP group has the responsibility to pay for the service in money and that any required verifications are provided. BEM 554, p. 1. Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130 (April 2017), p. 1. Verifications are required under many different circumstances, including when an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BAM 130, p. 1. The Department is required to verify shelter expenses at application and when a change is reported. BEM 554, p. 14. If the client fails to verify a reported change in shelter, the Department removes the old expense until the next expense is verified. BEM 554, p. 14.

When Petitioner reported the change in shelter expenses, the Department properly sought to verify the new amount. However, upon Petitioner's failure to timely return the requested verifications, the Department improperly removed the entire shelter expense from Petitioner's budget. Department policy only permits the removal of the old expense if the "client fails to verify a reported change in shelter," not just a reported change in shelter expenses. In this case, Petitioner reported that she was living in the same location but that her shelter expenses increased by a small amount. As this was not a situation where there was a reported change in shelter, the policy regarding the removal of the old shelter expense is not applicable. Instead, the Department should have continued Petitioner's already verified and lower shelter expense of \$410.

In addition to erroneously removing the verified shelter expense from Petitioner's budget despite not receiving a reported change in shelter, the Department failed to provide Petitioner with timely notice of its negative case action.

Upon certification of eligibility results, the Department notifies a client in writing of positive and negative actions by generating an appropriate notice of case action. BAM 220 (April 2019), p. 2. A notice of case action must inform the client of (1) the action

being taken by the Department, (2) the reason or reasons for the action, (3) the basis in policy for the action, (4) how to contest the action, and (5) the conditions under which benefits are continued if a hearing is requested. BAM 220, pp. 2-3. A positive action is a Department action to approve an application or increase a benefit. BAM 220, p. 1. A negative action is a Department action to deny an application or to reduce, suspend, or terminate a benefit. BAM 220, p. 1.

There are two types of notices, adequate notice and timely notice. BAM 220, pp. 3-5. Adequate notice is a written notice sent to the client at the same time an action takes effect and is given for an approval or denial of an application and for increases in benefits. BAM 220, p. 3. Timely notice is given for a negative action unless policy specifies adequate notice or no notice applies. BAM 220, p. 4. A timely notice is mailed at least 11 days before the intended negative action takes effect. BAM 220, p. 5. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p. 5.

During the hearing, the Department witness testified that at no point did the Department provide Petitioner with notice to inform her of negative case action of reducing her FAP benefits, effective August 1, 2019. As Petitioner only reported the change that led to the reduction on July 24, 2019, it was impossible for the Department to properly provide timely notice of a negative action based on that information. Compounding the error was the fact that the change was effective just two days after the Department issued the Shelter Verification to Petitioner. Thus, even if the Department was correct that failure to verify a reported change in shelter expense results in the shelter expense being budgeted to zero, Petitioner had yet to fail in that respect as the deadline for providing the verifications had not passed.

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 reduced Petitioner's FAP benefits without notice, effective August 1, 2019.

### **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 FAP benefits, effective August 1, 2019, ongoing, and include Petitioner's verified shelter expenses of either \$410 or \$435 in the budget;
2. Promptly issue to Petitioner any supplements due;

3. If the Department's redetermination of Petitioner's FAP benefits going forward results in a reduction in FAP benefits, provide Petitioner with the notice she is entitled to under law and Department policy;
4. Notify Petitioner in writing of its decisions.

JM/tm



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**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**

Chelsea McCune  
27690 Van Dyke  
Warren, MI  
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**Petitioner**



cc: FAP: M. Holden; D. Sweeney  
AP Specialist-Macomb (4)