



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: December 20, 2019
MOAHR Docket No.: 19-012551
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 December 19, 2019, from Lansing, Michigan. The Petitioner was unrepresented. The Department of Health and Human Services (Department) was represented by Tonya Gregory, FIS Worker.

ISSUE

Did the Department properly calculate Petitioner's FAP allotment during the 90 days prior to her hearing request?

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 November 21, 2019, Petitioner filed a hearing request to dispute her allotment from June 20, 2019.
2. In July 2019, Petitioner verified that her income stopped on July 29, 2019. The Department failed to remove the income from the August 2019 FAP budget.
3. Petitioner does not dispute the September 2019 FAP allotment.
4. Petitioner's October FAP allotment was correct.

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.

The purview of an Administrative Law Judge is to review the Department's action and to make a determination, if the evidence of record supports that action, taken by the Department. After the Department meets its burden of going forward, Petitioner has burden of proof to show that the action is not supported by the evidence and is contrary to law or policy. ALJs do not have any jurisdiction to deviate from law or policy due to individual circumstances.

Applicable policy and procedure to the issues here are found at BEM 550, 556, 115, and BAM 130. Corresponding federal regulations are found at 7 CFR 271.8, 273.11, 273.9, 273.10, 273.2, 273.4, 273.14, and 273.2.

Regarding jurisdiction, individuals requesting administrative hearings only have a right to have their benefits reviewed 90 days prior to a hearing request. Here, Petitioner can have her benefits reviewed back to August 21, 2019. Regarding the August 2019 benefits, the Department presented evidence of having budgeted Petitioner's August 2019 benefits with earned income. The Department's budget was in error, as the Department had in its possession, timely verification that Petitioner's income stopped on July 29, 2019. Thus, the Department's August 2019 allotment was incorrect, and Petitioner has a right to have a supplement from August 21, 2019 through August 31, 2019.

Petitioner does not dispute her September 2019 FAP benefits.

Unrefuted evidence shows that Petitioner's October 2019 benefits were correct.

Regarding Petitioner's November 2019 benefits, the Department indicated that it had budgeted [REDACTED] in income. Petitioner repeatedly argued at hearing that she did not have earned income. Petitioner was correct. However, after extensive review of the verifications and evidence here, it was discovered that Petitioner's [REDACTED] was actually workmen's comp which when revealed, Petitioner admitted. Prior to this time, Petitioner was not disclosing the source. The Department is required to count all sources of

income, including workmen's compensation. Petitioner failed to meet her burden to show that the November 2019 budget was incorrect.

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 correctly budgeted September, October and November 2019 FAP benefits and thus the Department is partially affirmed. The Department incorrectly budgeted Petitioner's August 2019 benefits and thus, from August 21, 2019 to August 31, 2019, the Department's FAP budget is reversed.

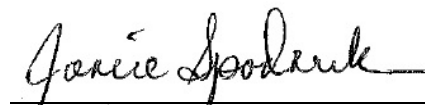
DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART**, with respect to Petitioner's September, October and November 2019 FAP benefits, and **REVERSED IN PART**, with respect to Petitioner's August 2019 FAP benefits.

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. Recalculate Petitioner's August 2019 FAP benefits by removing Petitioner's earned income, and
2. Issue supplemental benefits to Petitioner by prorating Petitioner's August FAP eligibility from August 21, 2019 through August 31, 2019, if otherwise eligible.

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

Denise Ezell
3040 W. Grand Blvd., Ste. 5-450
Detroit, MI 48202

Wayne (23) County DHHS – Via
Electronic Mail

BSC4 – Via Electronic Mail

M. Holden – Via Electronic Mail

D. Sweeney – Via Electronic Mail

Petitioner

 – Via First Class Mail
 MI 