



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: February 13, 2020
MOAHR Docket No.: 19-013504
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, 7 CFR 273.15, and Michigan Administrative Code, R 792.11002. After due notice, a hearing was held in person in Kalamazoo, Michigan, on February 12, 2020. Petitioner, [REDACTED], appeared and represented himself. Respondent, Department of Health and Human Services (Department), had Carrie Taylor, Assistance Payments Supervisor, and Yolanda Lopez, Eligibility Specialist, appear as its representatives. Neither party had any additional witnesses.

Two exhibits were admitted into evidence during the hearing. A 19-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A, and a 28-page packet of documents provided by Petitioner was admitted collectively as Petitioner's Exhibit 1.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (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. Petitioner is a FAP recipient.
2. Petitioner has a household size of one, Petitioner receives \$1,020.00 per month from social security, Petitioner pays \$218.00 per month for housing costs, and Petitioner is responsible for paying his own heating and cooling utilities.

3. On November 1, 2019, the Department mailed a mid-certification contact notice to Petitioner to obtain information from Petitioner to review his eligibility for FAP. Petitioner's response was due by December 1, 2019.
4. On November 22, 2019, Petitioner provided the Department with the information requested in the mid-certification contact notice.
5. The Department did not log Petitioner's response as received.
6. On December 10, 2019, the Department issued a notice of FAP closure, which stated that Petitioner's FAP benefits were closing December 31, 2019, because he did not respond to the Department's mid-certification contact notice.
7. On December 12, 2019, the Department mailed a shelter verification form to Petitioner to obtain information about his housing costs. Petitioner's response was due by December 23, 2019.
8. On December 19, 2019, the Department received Petitioner's completed shelter verification form. The form was completed by [REDACTED]. The form indicated that Petitioner was paying \$433.00 per month for rent.
9. On December 23, 2019, Petitioner requested a hearing to dispute the closure of his FAP benefits.
10. On December 27, 2019, the Department reviewed Petitioner's case and discovered that it had erroneously failed to log Petitioner's response to the mid-certification contact notice as received. The Department updated its records to reflect that Petitioner's response was received on November 22, 2019. The Department then mailed a new notice of case action to Petitioner to notify Petitioner that he was eligible for FAP benefits effective January 1, 2020, in the amount of \$92.00 for January and then \$100.00 per month thereafter. The notice of case action included a budget, which showed that Petitioner's FAP benefit was determined based on monthly income of \$1,020.00 and a monthly housing cost of \$433.00.
11. On January 6, 2020, Petitioner met with the Department during a prehearing conference. At the conference Petitioner asserted that the \$433.00 budgeted for his monthly housing costs was incorrect, but Petitioner refused to provide the Department with information about his housing costs.
12. On January 6, 2020, when the Department reviewed Petitioner's case, the Department discovered that it budgeted the incorrect amount for Petitioner's income. The Department had budgeted \$1,004.00 per month as Petitioner's income when his income was actually \$1,020.00 per month. The Department corrected its budget, which reduced Petitioner's FAP benefit by \$8.00 per month. The Department then mailed a notice of case action to Petitioner to notify Petitioner that his FAP benefits were going to be decreased to \$92.00 per month effective February 1, 2020.

13. Petitioner subsequently provided verification that his housing costs are \$218.00 per month. The Department is planning to correct its budget to change Petitioner's housing costs from \$433.00 to \$218.00.

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).

JURISDICTION

During the hearing, Petitioner wanted to address a complaint regarding the Department's failure to accommodate his disability pursuant to his request. No testimony or any other evidence was received regarding this issue because the Michigan Office of Administrative Hearings and Rules (MOAHR) does not have jurisdiction to address it.

Rule 792.11002 of the Michigan Administrative Code (MAC) states when an individual has a right to an administrative hearing regarding public assistance. A right to an administrative hearing regarding public assistance exists when (a) an applicant's claim for assistance has been denied or not acted upon with reasonable promptness; (b) an applicant has received notice of suspension, reduction, or closure of benefits; or (c) an applicant has experienced failure of the Department to take into account the recipient's choice of service. MAC, R 792.11002(1). There is no right to an administrative hearing to address a complaint as to alleged misconduct or mistreatment by a state employee – such a complaint shall be referred to the Department's customer service unit. MAC, R 792.11002(3).

Petitioner's complaint was not addressed at the hearing because it did not fall within the limited scenarios which give rise to a right to an administrative hearing regarding public assistance. Further, Petitioner's complaint amounted to a complaint regarding misconduct or mistreatment by a state employee, and there is no right to an administrative hearing regarding such complaints. If Petitioner wishes to address his complaint, Petitioner may contact the Department's customer service unit.

FOOD ASSISTANCE

The Food Assistance Program (FAP) 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 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, the Department improperly closed Petitioner's case, which prompted Petitioner's hearing request. The Department improperly closed Petitioner's case

because it closed his case for failing to respond to the Department's mid-certification contact notice when in fact he had responded as instructed. Although the Department improperly closed Petitioner's case, Petitioner's FAP benefits were not affected because the Department caught its error in time to reinstate Petitioner's FAP benefits, and Petitioner did not suffer any interruption in his FAP benefits.

When the Department reinstated Petitioner's FAP benefits, the Department determined Petitioner's FAP benefit based on a monthly income of \$1,004.00 and a monthly housing cost of \$433.00. The Department mistakenly budgeted \$1,004.00 per month as Petitioner's income when it should have budgeted \$1,020.00. The Department discovered its mistake and corrected it before any FAP benefits were issued to Petitioner based on the incorrect amount of monthly income.

The Department budgeted the incorrect amount for housing costs because Petitioner's actual housing costs were only \$218.00 per month, but the Department acted properly because it used the information it had available to it which indicated that Petitioner's monthly housing costs were \$433.00. The Department subsequently obtained verification that Petitioner's housing costs are only \$218.00 per month. The Department must update Petitioner's housing costs to reflect the correct amount based on the new verification it obtained. The reduction in housing costs will result in a decrease in FAP benefits. The Department must issue a new notice to Petitioner once it updates Petitioner's housing costs and redetermines his FAP benefit amount.

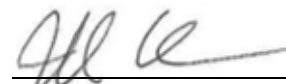
Based on the evidence presented, Petitioner did not establish that the Department did not act in accordance with its policies and the applicable law. Therefore, I must find that the Department properly determined Petitioner's FAP benefits.

DECISION AND ORDER

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 act in accordance with its policies and the applicable law when it determined Petitioner's FAP benefits.

IT IS ORDERED the Department's decision is AFFIRMED.

JK/ml



Jeffrey Kemm
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

Kalamazoo County DHHS – Via Electronic Mail

M. Holden – Via Electronic Mail

D. Sweeney – Via Electronic Mail

Petitioner

[REDACTED]