



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: March 6, 2020
MOAHR Docket No.: 20-000336
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 Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on March 5, 2020, from Lansing, Michigan. Petitioner, [REDACTED] had his authorized representative, [REDACTED] appear on his behalf. Respondent, Department of Health and Human Services (Department), had April Nemeč, Hearing Facilitator, appear as its representative. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 30-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits effective February 1, 2020, for failing to return a mid-certification notice by December 1, 2019, as instructed?

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 a FAP benefit recipient.
2. On November 1, 2019, the Department mailed a mid-certification contact notice to Petitioner to obtain information to review his eligibility for assistance. The notice instructed Petitioner to provide information to the Department by December 1, 2019.

3. The Department did not receive Petitioner's response to the mid-certification notice by December 1, 2019.
4. On December 10, 2019, the Department mailed a notice of FAP closure to Petitioner to notify Petitioner that his FAP benefits were going to be closed effective December 31, 2019, because he did not return the mid-certification notice as instructed.
5. The Department failed to close Petitioner's FAP benefits effective December 31, 2019.
6. On January 2, 2020, Petitioner requested a hearing to dispute his FAP closure.
7. The Department subsequently discovered that Petitioner's FAP benefits were not closed when they should have been; the Department then took action to close Petitioner's FAP benefits effective February 1, 2020.

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) 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, Petitioner is disputing the closure of his FAP benefits. The Department closed Petitioner's FAP benefits for failing to return a mid-certification notice by December 1, 2019, as instructed.

The Department must periodically redetermine or renew an individual's eligibility for assistance. BAM 210 (October 1, 2019), p. 1. Mid-certification notices are used to complete this process. *Id.* When a mid-certification notice is not returned as instructed, the Department must send a potential FAP closure notice to the client to remind the client to complete the notice and return it to the Department by the end of the month to avoid FAP closure. *Id.* at 13.

Based on the evidence presented, I must find that the Department did not act in accordance with its policies because the notice mailed to Petitioner after his mid-certification notice was not returned, did not satisfy the requirements set forth in the Department's policy, BAM 210. Specifically, BAM 210 states that a notice of *potential* FAP closure is supposed to be mailed when a mid-certification notice is not returned as instructed. The notice sent to Petitioner on December 10, 2019, did not state anything

about a *potential* closure; to the contrary, it stated that his FAP closure was definite. Further, BAM 210 states the purpose of the notice is to remind the client to complete the notice and return it to the Department by the end of the month, and the notice sent to Petitioner did not contain any verbiage to remind Petitioner to complete the mid-certification notice by the end of the month. Thus, the Department's notice did not satisfy the requirements set forth in BAM 210 because it did not properly advise Petitioner that his FAP closure was potential as opposed to definite, and it did not remind Petitioner to return the mid-certification notice by the end of the month to avoid FAP closure.

Since the Department did not act in accordance with its policies, the Department's action must be reversed.

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 not act in accordance with its policies and the applicable law when it closed Petitioner's FAP benefits effective February 1, 2020, for failing to return a mid-certification notice by December 1, 2019.

IT IS ORDERED the Department's decision is REVERSED. the Department shall begin to implement this decision within 10 days.

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

Genesee (Union St.) County DHHS – Via
Electronic Mail

M. Holden – Via Electronic Mail

D. Sweeney – Via Electronic Mail

Authorized Hearing Rep.

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

Petitioner

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