



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: June 16, 2020
MOAHR Docket No.: 20-003086
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 June 9, 2020, from Lansing, Michigan. Petitioner was represented by Attorney Anastassia Kolosova (P82785). Petitioner [REDACTED] appeared to testify. The Department of Health and Human Services (Department or Respondent) was represented by Assistant Attorney General Stephanie M. Service.

By stipulation Respondent's Exhibit A pages 1-36 and Petitioner's Exhibit 1-8 were admitted to the record as evidence.

ISSUE

Did the Department properly provide notice of cancellation of 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 was a FAP benefit recipient.
2. On December 13, 2019 Petitioner submitted a completed DHS-1010, redetermination form for January 1, 2020, food and medical review along with 30 days of the most recent Paystubs.
3. On January 14, 2020, the case was processed in food benefits were put into closure for excess income.

4. No DHS-1605 Notice of Case Action was sent to Petitioner informing her of the cancellation of her Food Assistance Program benefits.
5. On March 6, 2020, the Department caseworker discovered that Petitioner had not been sent notice and a DHS-176 was mailed to Petitioner notifying her that her Food Assistance Program benefits were to be canceled.
6. On [REDACTED], 2020, Petitioner reapplied for benefits and has been approved for Food Assistance Program benefits as of April 9, 2020 forward.
7. On April 8, 2020, Petitioner filed a request for hearing to contest the Department's negative action for the months of January, February and March 2020.
8. On April 23, 2020, the Michigan Office of Administrative Hearings and Rules received a hearing summary and attached documents from the Department.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a Department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 Michigan Office of Administrative Hearings and Rules (MOAHR) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits, or services are provided.
- Delay of any action beyond standards of promptness.

- For FAP only, the current level of benefits or denial of expedited service. BAM 600 (April 1, 2017), pp 3-4.

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days. BAM 600, page 6

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.

Pertinent Department Policy dictates:

Refer to policy in BAM 600, Hearings, if a client disputes a case action.

There are two types of written notice: adequate and timely. A notice of case action **must** specify the following:

- The action(s) being taken by the Department.
- The reason(s) for the action.
- The specific manual item which cites the legal base for an action or the regulation or law itself
- An explanation of the right to request a hearing.
- The conditions under which benefits are continued if a hearing is requested. (BAM 200, Emphasis Added)

All Programs

Timely notice is given for a negative action unless policy specifies adequate notice or no notice. See Adequate Notice and, for FAP only, Actions Not Requiring Notice, in this item. **A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pended to provide the client a chance to react to the proposed action.** (BAM 200, Emphasis Added)

In the instant case, the Department representative conceded on the record that Petitioner was not provided notice of case action before her Food Assistance Program benefits were terminated. Petitioner was not provided notice in a timely manner as is required by policy.

The undersigned Administrative Law Judge finds that the Department has not established by the necessary competent, material and substantial evidence on the

record that it was acting in compliance with Department policy when it failed to provide Petitioner Notice of cancellation of Petitioner's Food Assistance Program benefits.


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. Reinstate Petitioner's Food Assistance Program case to January 1, 2020;
2. Allow Petitioner to submit updated paystubs for the months of January, February and March 2020;
3. Redetermine Petitioner's eligibility for Food Assistance Program benefits using the appropriate pay stubs for Petitioner;
4. If Petitioner is otherwise eligible, pay to Petitioner the amount of Food Assistance Program benefits to which she is entitled for the months of January, February and March 2020, in compliance with Department policy.

LL/hb



Landis Lain
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	Washtenaw County via electronic mail BSC4 via electronic mail M. Holden via electronic mail D. Sweeney via electronic mail
Counsel for Respondent	Jennifer L.A. Walker, AAG via electronic mail
Counsel for Respondent	Stephanie M. Service, AAG via electronic mail
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