



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]

Date Mailed: November 13, 2020
MOAHR Docket No.: 20-005927
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 3-way telephone hearing was held on November 4, 2020, via telephone conference line. Petitioner participated and was unrepresented.¹ The Michigan Department of Health and Human Services (MDHHS) was represented by Elecisha Dolby, specialist

ISSUES

The issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of July 2020, Petitioner was an ongoing FAP recipient who previously reported employment income to MDHHS.
2. On July 1, 2020, MDHHS mailed Petitioner a Semi-Annual Contact Report (SACR) with a due date of August 1, 2020.

¹ During the hearing, Petitioner was afforded an opportunity to submit an email as evidence. To do so, Petitioner testified that she needed to suspend her hearing participation to call a family member. Petitioner was given until 3:28 p.m. to call back into the hearing. By 3:32 p.m., Petitioner had not returned to the hearing and the hearing continued in her absence.

3. On July 28, 2020, Petitioner submitted an SACR and related verifications to MDHHS.
4. On August 10, 2020 MDHHS mailed Petitioner a Notice of Food Assistance (FAP) Closure form stating that Petitioner did not return a completed SACR and/or required information and that her case would close after August 2020.
5. Beginning September 1, 2020, Petitioner's FAP eligibility ended.
6. On [REDACTED] 2020, Petitioner requested a hearing to dispute the termination of FAP benefits.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a termination of FAP benefits. Exhibit A, pp. 3-4. A Notice of Food Assistance (FAP) Closure form dated August 10, 2020, stated that Petitioner's FAP eligibility would end after August 2020 due to Petitioner's failure to return a completed SACR. Exhibit A, pp. 6-7.

MDHHS sends a SACR in the beginning of the fifth month for cases assigned a 12-month benefit period. BAM 210 (April 2019) pp. 10-11. A complete SACR must be submitted by groups with countable earnings and a 12-month benefit period. *Id.*, p. 11. A report is considered complete when all of the sections (including the signature section) of the SACR are answered completely and required verifications are returned by the client or client's authorized representative. *Id.* If MDHHS does not log the SACR by the 10th day of the sixth month, a Potential Food Assistance (FAP) Closure is sent to the client. *Id.*, p. 14. This reminder notice explains that the client must return the SACR and all required verifications by the last day of the month, or the case will close. *Id.* If the client fails to return a complete SACR by the last day of the sixth month. MDHHS will automatically close the case. *Id.*

MDHHS mailed Petitioner a SACR on July 1, 2020. Exhibit A, pp. 7-10. The SACR stated that Petitioner had until August 1, 2020 to return the form to MDHHS or that FAP eligibility could end. The only dispute was whether Petitioner returned the form to MDHHS before the end of August 2020.

MDHHS contended that Petitioner failed to return the SACR before the end of August 2020. MDHHS's contention was consistent with Petitioner's electronic case file (ECF) which did not list a SACR as returned by Petitioner. Exhibit A, pp. 8-10.² Petitioner's ECF did list a submission from Respondent on July 28, 2020, though an SACR was not among the documents in the ECF.

Petitioner testified that she always returns her documents timely and returned the SACR in July 2020. Petitioner further testified that she emailed her specialist about the problem. Petitioner did not corroborate her testimony with documentary evidence of her emails.³ Petitioner's testimony concerning attempting to call her specialist was more credible than her attempted emails.

Petitioner testified that she called her specialist numerous times after receiving the notice of FAP closure but was always met with a full voicemail. Petitioner's specialist acknowledged that her email is sometimes full. Petitioner's specialist also acknowledged that Petitioner submitted verifications related to her SACR on July 28, 2020.

Given the evidence, Petitioner timely submitted a SACR to MDHHS in July 2020. Thus, the termination of Petitioner's FAP eligibility was improper. As a remedy, MDHHS will be ordered to process Petitioner's FAP eligibility from the closure month of September 2020. Petitioner should be aware that she may be obligated to return a SACR to MDHHS before such processing occurs.

² An ECF is a storage database listing all of a client's written submissions. BAM 300 (January 2020) p. 1.

³ Petitioner was afforded the opportunity to submit a copy of one of her alleged emails to MDHHS during the hearing. Petitioner testified that she did not send the emails to MDHHS because her phone was broken at the time. Petitioner ultimately did not forward an email and did not participate further in the hearing.


DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FAP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's FAP eligibility beginning September 2020 subject to the finding that Petitioner timely submitted a SACR in July 2020; and
- (2) Process Petitioner's FAP eligibility accordingly, including issuing a supplement of any benefits improperly not issued.

The actions taken by MDHHS are **REVERSED**.

CG/tm



Christian Gardocki
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

Via Email:

MDHHS-Wayne-15-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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