



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: October 23, 2020  
MOAHR Docket No.: 20-006143  
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 telephone hearing was held on October 22, 2020.

Petitioner personally appeared unrepresented.

The Department of Health and Human Services (Department) was represented by Sara McCloud, APW with the Michigan Combined Application Project (MiCAP) program.

Department Exhibit A.23 was offered and admitted into the record.

### **ISSUE**

Did the Department properly process Petitioner's MiCAP case effective October 1, 2020?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. At all relevant times, Petitioner has been a beneficiary of the MiCAP program.
2. Prior to the action in dispute herein, Petitioner's benefit was \$100.00 per month.
3. On September 12, 2020, the Respondent issued a Notice of Case Action (DHS-1605) informing Petitioner that effective October 1, 2020, his benefits will decrease to \$40.00 per month. Exhibit 17.
4. Petitioner has a shelter/utility/heat expense of \$547.00 per month.

5. On September 22, 2020, Petitioner requested a hearing.

### **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 primary MDHHS policy is found at BEM 613. Applicable federal authority is cited in that policy as Food and Nutrition Act of 2008, as amended; 7 USC 2026.

Policy specific to the facts herein regarding the MiCAP program states in part:

#### **FAP**

The Michigan Combined Application Project (MiCAP) is a Food Assistance demonstration project approved by the Food and Nutrition Service (FNS). MiCAP is a series of waivers that allows Michigan Department of Health and Human Services (MDHHS) to issue Food Assistance Program (FAP) benefits to Supplemental Security Income (SSI) individuals who qualify for this program.

The program is administered by the centrally located MiCAP unit. Final eligibility determination and redeterminations are the responsibility of the MiCAP unit.

All eligibility factors in this item must be met.

#### **MiCAP Targeted Population**

The targeted MiCAP population is SSI individuals with the following characteristics:

- Age 18 or older.
- Receives SSI income and no other type of income.

- Meets the Social Security Administrations (SSA) definition of independent living (Living arrangement code A). BEM 618, Page 1.
- Resides in Michigan.
- Purchases and prepares food separately. BEM 618, Page 1.

**Benefit  
Amount**

The amount of Food Assistance Program (FAP) benefits MiCAP individuals receive is determined by their total shelter expenses, (shelter plus heat and utility expenses). If an individual's total shelter expenses are:

- Below \$525, the FAP benefit is \$40 per month.
- Between \$525 and \$749 the FAP benefit is \$105 per month.
- Equal to or exceed \$750, the FAP benefit amount is \$185 per month. BEM 618, Page 3.

Petitioner requested an administrative hearing to dispute the reduction of his MiCAP benefits from \$100.00 to \$40.00 per month. The Department testified that the \$40.00 per month was not correct due to Petitioner having a \$547.00 shelter (heat and utility) cost. The Department representative testified that upon the receipt of Petitioner's hearing request the worker reviewed Petitioner's case discovering that in fact, Petitioner should be receiving a higher allotment. After the review, on September 30, 2020, the Department issued a new Notice of Case Action (DHS-1605) informing Petitioner that his allotment effective October 1, 2020, will be \$105.00. Petitioner acknowledged at the administrative hearing that he did in fact, receive this notice even though it was not part of the evidentiary packet.

The purview of an administrative law judge is to review the Department's action, at the time it took the action, and to make a determination as to whether the action is support by policy and not contrary to law. Here, the Department's September 12, 2020, Notice of Case Action was not correct. As noted above in the BEM 618 policy, Petitioner was entitled to \$105.00, not \$40.00. Moreover, based on the Department's own testimony, the correct shelter/utility standard was correctly reflected "in the system" and presumably in Petitioner's file; however, the Department failed to budget that deduction in calculating Petitioner's MiCAP eligibility resulting in an incorrect notice reducing eligibility to \$40.00. It can be reasonably deduced that the Department had the correct information and failed to include it at the time of the September 17, 2020 notice.

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 September 17, 2020, Department action reducing Petitioner's MiCAP benefit to \$40.00 was not correct and thus, cannot be upheld. As such, the undersigned is required to reverse the Department's actions.

It is noted that the Department subsequently changed its action and testified that a correction was made. However, the Department failed to upload any updated notices in the evidentiary file for this hearing, and thus, the undersigned can only rely on the evidence submitted for hearing.

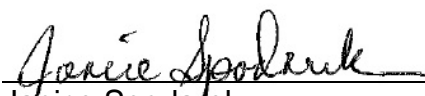
It is also noted that the parties agreed that this decision only addresses Petitioner's base allotment prior to any eligibility additional COVID supplement. There is no dispute here regarding any additional benefits Petitioner is eligible for due to the COVID supplements.

### **DECISION AND ORDER**

Accordingly, the Department's decision is **REVERSED**.

The Department is ordered to, within 10 days of this decision and order, ensure that a new Notice of Case Action has been issued to Petitioner informing him that his base MiCAP benefit is \$105.00 per month, before any COVID supplement, unless already issued.

JS/ml

  
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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**

Nicolette Vanhavel  
DHS MI-CAP SSPC – via electronic mail

M. Holden – via electronic mail

D. Sweeney – via electronic mail

**Petitioner**

[REDACTED]  
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