



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: January 6, 2021
MOAHR Docket No.: 20-006877
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 January 4, 2021, from Detroit, Michigan. Petitioner was present with his nephew and Bengali interpreter, [REDACTED]. The Department of Health and Human Services (Department) was represented by Markita Mobley, Hearing Facilitator.

ISSUE

Did the Department properly deny Petitioner's Food Assistance Program (FAP) application?

FINDINGS OF FACT

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

1. On [REDACTED], 2020, Petitioner submitted an application for FAP benefits (Exhibit A, pp. 5-10).
2. On August 19, 2020, the Department sent Petitioner an Appointment Notice informing him that he had an interview scheduled on [REDACTED] 2020 (Exhibit A, pp. 11-12).
3. On September 16, 2020, the Department sent Petitioner a Notice of Case Action informing him that his application for FAP benefits was denied for failing to complete the application process (Exhibit A, pp. 13-14).
4. On October 28, 2020, Petitioner submitted a request for hearing disputing the Department's actions.

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.

In this case, Petitioner submitted an application for FAP benefits on [REDACTED], 2020. On August 19, 2020, the Department sent Petitioner an Appointment Notice informing him that he had a scheduled interview on [REDACTED], 2020, at 10:00 AM.

During the processing of a FAP application, the Department will conduct a telephone interview before approving benefits. BAM 115 (October 2019), p. 1. For FAP, the interview must be held by the 20th day after the application date to allow the client at least 10 days to provide verifications by the 30th day. BAM 115, p. 24. If a client misses their interview appointment, the department will send a Notice of Missed Interview, advising them that it is the client's responsibility to request another interview date. BAM 115, p. 24. If the client calls to reschedule, the Department will set the interview prior to the 30th day, if possible. BAM 115, p. 24. If the client fails to reschedule or misses the rescheduled interview, the Department will deny the application on the 30th day. BAM 115, p. 24.

The Department testified that Petitioner's worker attempted to contact Petitioner on [REDACTED], 2020. The Department stated that the worker entered a notation into Petitioner's electronic case comments that Petitioner did not answer the call and that the worker was unable to leave a voicemail, as the voice mailbox was full. The Department also testified that a Notice of Missed Interview was sent to Petitioner on [REDACTED], 2020. The Department stated that Petitioner did not contact the Department. As a result, Petitioner's FAP application was denied.

Petitioner testified that he received the Appointment Notice but did not receive a phone call on [REDACTED], 2020. Petitioner stated that he also received the Notice of Missed Interview. Petitioner testified that he called his worker and left a voicemail but never received a return phone call.

The Department and Petitioner provided conflicting testimony. The Department did not provide the case comments from which it obtained the information regarding the contacts made to Petitioner, nor did the Department provide a witness with firsthand

testimony to verify that Petitioner failed to contact the Department. In the absence of such evidence, the Department failed to establish that Petitioner did not comply with the interview process. Therefore, the Department failed to establish that it properly followed policy when it denied Petitioner's FAP application.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's FAP application. 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 and reprocess Petitioner's [REDACTED], 2020 FAP application;
2. If Petitioner is eligible for FAP benefits, issue supplements he is entitled to receive; and
3. Notify Petitioner of its decision in writing.

EM/jem



Ellen McLemore
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-55-Hearings
BSC4-HearingDecsions
M. Holden
D. Sweeney
MOAHR

Petitioner – Via First-Class Mail:

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