



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 20, 2021  
MOAHR Docket No.: 20-007093  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

### **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 11, 2021, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Angela Abernathy, Family Independence Manager.

### **ISSUE**

Did the Department properly deny Petitioner's request for State Emergency Relief (SER) assistance?

Did the Department properly process 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. On or around [REDACTED], 2020, Petitioner submitted an application requesting SER assistance with heat, electric, and water services. (Exhibit A, pp. 6-11)
2. On the application, Petitioner reported that her household size was two (Petitioner and her adult daughter, [REDACTED]), that her daughter was employed and receiving income of \$[REDACTED] biweekly, and that Petitioner was receiving unemployment compensation benefits (UCB) of \$[REDACTED] biweekly.
3. The Department obtained information through a consolidated inquiry showing that Petitioner received \$320 in gross weekly UCB. (Exhibit A, pp. 18-20). While

Petitioner asserted her UCB earnings were lower, she did not present any documentation in support of her testimony.

4. On October 20, 2020, the Department sent Petitioner a State Emergency Relief Decision Notice advising her that her request for SER with heat and electric energy services was denied because her countable income is higher than the maximum amount allowed. (Exhibit A, pp. 12-14)
5. Petitioner confirmed that she did not have any issue with water services and that she checked the box on the application requesting assistance with water by mistake.
6. Petitioner is an ongoing recipient of FAP benefits.
7. On or around October 15, 2020, the Department sent Petitioner a Notice of Case Action advising her that effective November 1, 2020, her FAP case would be closed due to excess income.
8. The Department acknowledged that the case closure identified in the October 15, 2020 Notice of Case Action was an error and due to a glitch in the Department's system which budgeted Petitioner's unearned income from UCB twice.
9. On November 4, 2020, Petitioner requested a hearing disputing the Department's denial of her SER application and the closure of her FAP case.
10. After receiving verification that Petitioner's daughter was no longer in the household and removing the daughter's income from employment from the FAP budget, the Department reinstated Petitioner's FAP case.
11. On December 15, 2020, the Department sent Petitioner a Notice of Case Action advising her that effective November 1, 2020, her FAP case was reinstated and effective December 1, 2020, her daughter had been removed from the household. (Exhibit B)
12. The Department conceded that although Petitioner was eligible to receive the maximum amount of FAP benefits based on her group size in accordance with the ESA Memo 2020-15 COVID-19 Response Emergency Food Assistance Allotment and ESA Memo 2021-03 COVID-19 Food Assistance Emergency Allotment, she did not receive the additional supplement for the months of November 2020, ongoing. (Exhibit B)

### **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).

### **FAP**

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.

Petitioner requested a hearing disputing the Department's closure of her FAP case effective November 1, 2020. At the hearing, the Department testified that Petitioner's FAP case was closed in error due to a glitch in the system which improperly included Petitioner's UCB unearned income twice. After obtaining information from Petitioner regarding her daughter's removal from the household, the Department reinstated Petitioner's FAP case effective November 1, 2020 and issued the December 15, 2020 Notice of Case Action. Although the Department established that it reinstated Petitioner's FAP case and Petitioner confirmed that she received some FAP benefits for November 2020 and December 2020, the Department conceded that Petitioner was eligible to receive the maximum amount of FAP benefits for her group size for the months of November 2020, ongoing but as of the hearing date, the benefits had not been issued. This testimony was confirmed upon review of the Benefit Summary Inquiry. (Exhibit B). Therefore, the Department will be ordered to issue FAP supplements in the maximum amount based on Petitioner's household size in accordance with ESA Memo 2020-15 COVID-19 Response Emergency Food Assistance Allotment and ESA Memo 2021-03 COVID-19 Food Assistance Emergency Allotment.

### **SER**

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

In this case, Petitioner requested a hearing disputing the denial of her request for SER assistance with heat and electric services. Petitioner confirmed that she had no dispute regarding her request for assistance with water, as she checked the box by mistake. The Department testified that based on information obtained through the Online Resources for Agencies (ORA), after deducting late fees, Petitioner had past due electric expenses in the amount of \$191.05 and past due heating expenses of \$24.55. Petitioner did not present any documentation indicating that her actual past due expenses were higher than the amounts relied upon and considered by the Department.

Eligible households who meet all SER eligibility requirements may receive assistance to help them with household heat and electricity costs. Funding for energy services

assistance is provided through the Low Income Home Energy Assistance Program (LIHEAP). ERM 301 (October 2020), p. 1. When the group's heat or electric service for their current residence is in past due status, in threat of shutoff or is already shut off and must be restored, payment may be authorized to the enrolled provider. ERM 301, pp. 3-4. SER group members must use their available income and cash assets that will help resolve the emergency and the Department will not authorize a SER payment unless it will resolve the emergency. ERM 208 (October 2020), p. 1.

Income eligibility is required for assistance with SER energy services, including electric and heat. All household members are included in the SER group and income of all household members is budgeted. Income verification used for current eligibility for any other Department administered program may be used, if available. ERM 301, pp. 3-5. The Department is to verify and budget all non-excluded gross income the SER group expects to receive during the 30-day countable income period. The Department will not prorate income. ERM 206 (November 2019), pp. 1-5. There is no income copayment for emergency related services. The household income must be at or below the LIHEAP income limit for the group to qualify for SER. See EXHIBIT II - SER INCOME NEED STANDARDS FOR ENERGY/LIHEAP SERVICES in ERM 208. The SER income need standard for energy/LIHEAP services including electricity and heat for Petitioner's household size of two is \$2,155. ERM 301, pp. 6-8; ERM 208, pp. 6.

At the hearing, the Department testified that Petitioner's household was ineligible for SER assistance with past due heat and electric services because the household income was in excess of the income limit. On October 15, 2020, the Department sent Petitioner a State Emergency Relief Decision Notice advising her that her request for assistance with heat and electric services was denied because her countable income is higher than allowed. The Department testified that after budgeting Petitioner's monthly UCB of \$██████ as verified through the consolidated inquiry (\$320 weekly) and Petitioner's daughter's employment earnings of \$██████ as identified on the application (\$██████ biweekly), it determined that the household had income of \$██████, which was in excess of the income limit. The Department testified that it applied an income need standard of \$500 to Petitioner's two-person group size. It is noted that the Department applied an incorrect income need standard, however, as it considered the income limit applicable for non-energy services. See ERM 208, p. 6.

Although Petitioner testified that her daughter had moved out of the home, based on the information provided to the Department by Petitioner on the ██████████ 2020 assistance application, the Department properly considered Petitioner's daughter as a member of the household and considered her income at the time of the application. However, because the Department applied an incorrect income need standard, it follows that the Department failed to establish that Petitioner's household had excess income for energy related services.

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 Department policy when it denied Petitioner's [REDACTED], 2020 SER application.


**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. Issue FAP supplements to Petitioner for any benefits she was eligible to receive but did not, in accordance with ESA Memo 2020-15 COVID-19 Response Emergency Food Assistance Allotment and ESA Memo 2021-03 COVID-19 Food Assistance Emergency Allotment for the months of November 2020, ongoing;
2. Reregister and process Petitioner's [REDACTED], 2020 SER Application for assistance with electric and heat services to determine her eligibility for SER;
3. Issue supplements to Petitioner and/or her utility provider for any SER benefits Petitioner was eligible to receive but did not; and
4. Notify Petitioner in writing of its decision.

ZB/jem

  
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**Zainab A. Baydoun**  
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-31-Grandmont-Hearings  
BSC4-HearingDecsions  
M. Holden  
D. Sweeney  
T. Bair  
E. Holzhausen  
MOAHR

**Petitioner – Via First-Class Mail:**

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