



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: January 22, 2021
MOAHR Docket No.: 20-007850
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, an administrative hearing was held on January 21, 2021.

Petitioner personally appeared and testified.

Petitioner was represented by [REDACTED].

The Department of Health and Human Services (Department) failed to appear despite having notice of the administrative hearing issued on January 4, 2021. The hearing was held pursuant to MCL 24.272(1) and Michigan Administrative Rule 134.

Petitioner Exhibit A.11 was admitted into the record.

ISSUE

Did the Department properly close Petitioner's FAP case?

FINDINGS OF FACT

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

1. Pursuant to a yearly review, Petitioner's FAP case was reviewed in November 2020.
2. Petitioner received the required paperwork, which Petitioner completed, signed, and returned to the Department "...on November 19, 2020 in the box between the

front doors where an employee in the lobby told me to place it.” Petitioner’s Hearing Request, Exhibit A.4.

3. On December 10, 2020, the Department issued a Notice of Food Assistance Closure informing Petitioner that his FAP case will close effective December 31, 2020, due to Petitioner failing to complete the redetermination process.
4. On December 16, 2020, the Department called Petitioner and informed him that the Department had received his paperwork.
5. On December 17, 2020, Petitioner filed a hearing request.
6. On December 30, 2020, the Department filed Petitioner’s hearing request with MOAHR containing non-legible, incomplete pages.

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 pertinent sections of the APA and administrative rule for Michigan Office of Administrative Hearings and Rules proceedings pertaining to entry of default state as follows:

Sec. 72. (1) If a party fails to appear in a contested case after proper service of notice, the agency, if no adjournment is granted, may proceed with the hearing and make its decision in the absence of the party. MCL 24.272(1).

Sec. 78. (2) Except as otherwise provided by law, disposition may be made of a contested case by stipulation, agreed settlement, consent order, waiver, default or other method agreed upon by the parties. MCL 24.278(2). (Emphasis supplied).

Rule 134. (1) If a party fails to attend or participate in a scheduled proceeding after a properly served notice, the administrative law judge may conduct the proceedings without participation of the absent party. The administrative law judge may issue a default order or other dispositive order which shall state the grounds for the order.

(2) Within 7 days after service of a default order, the party against whom it was entered may file a written motion requesting the order be vacated. If the party demonstrates good cause for failing to attend a hearing or failing to comply with an order, the administrative law judge may reschedule, rehear, or otherwise reconsider the matter as required to serve the interests of justice and the orderly and prompt conduct of proceedings. 2015 Mich Admin Code, R 792.10134. (Emphasis supplied).

When a party fails to appear for an administrative hearing after proper service of process, the filing party may be entitled to a default as a matter of law and the hearing may proceed without the absent party. (See authority cited above.) Here the Department of Health and Human Services failed to appear at the administrative hearing despite having been notified pursuant a Notice of Hearing mailed by MOAHR on January 4, 2021.

Here, Petitioner contends that he did in fact complete the necessary paperwork and filed it with the Department. The Department's evidence fails to show any evidence that Petitioner did not sign his paperwork as the Department's proposed evidentiary packet is not legible. Petitioner was a credible witness, particularly in light of his specific memory of when and where he returned his forms, adding credibility to Petitioner's testimony. There is no document in the Department's proposed evidentiary packet which would support the Department's contention in the Hearing Summary page Exhibit A.1 to show that Petitioner failed to sign his redetermination forms. Petitioner contends that he did; Petitioner's testimony is unrefuted. As such, the Department has failed to meet its burden of going forward and has failed to present any evidence that Petitioner did not comply with the redetermination process. The Department's determination must be reversed.

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 closed Petitioner's FAP case.

DECISION AND ORDER

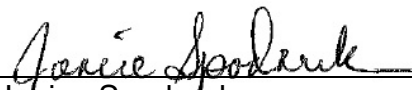
Accordingly, the Department's decision is **REVERSED**.

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 FAP case from the date of closure, and
2. Issue any supplemental benefits to Petitioner to which he is entitled from the date of closure, and
3. Issue a written notice to Petitioner informing him as to what his supplemental benefits will be, and
4. Review this case in accordance with the standard policy and procedure at the next review date.

IT IS SO ORDERED.

JS/ml



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

Courtney Jenkins
Washtenaw (Dist 20) County DHHS – via
electronic mail

BSC4 – via electronic mail

M. Holden – via electronic mail

D. Sweeney – via electronic mail

Petitioner

██████████ – via first class mail

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