



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: March 18, 2021
MOAHR Docket No.: 21-000116
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 March 10, 2021 from Lansing, Michigan. The Petitioner was represented by herself with a Spanish interpreter, Carlos. The Department of Health and Human Services (Department) was represented by Marlon Dorsey, Family Independence Manager and Lucinda Hamilton, Eligibility Specialist.

ISSUE

Did the Department properly determine eligibility for 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 [REDACTED], 2020, Petitioner applied for FAP with an application written in Spanish. Department Exhibit 1, pgs. 5-20.
2. On December 16, 2020, the Department Caseworker sent Petitioner an Appointment Notice, DHS-170, in English, for an appointment for December 21, 2020, at 11:00 a.m. Department Exhibit 1, pgs. 21-22.
3. On December 21, 2020, the Department Caseworker sent Petitioner a Notice of Missed Appointment, DHS-254, in English, for Petitioner to call to reschedule appointment by January 3, 2021, or her application would be denied. Department Exhibit 1, pg. 23.

4. On January 4, 2021, the Department Caseworker sent Petitioner a Notice of Case Action, DHS-1605, in English, that her application submitted on December 4, 2020, was denied for failure to complete the required interview to determine FAP eligibility. Department Exhibit 1, pgs. 24-27.
5. On January 12, 2021, the Department received a hearing request from Petitioner, contesting the Department's negative action because the Department Caseworker did not call her on December 21, 2020, and to inform the Department that she did not speak English and wanted to request a Spanish interpreter.

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, the Petitioner applied for FAP with an application written in Spanish on [REDACTED], 2020. Department Exhibit 1, pgs. 5-20. On December 16, 2020, the Department Caseworker sent Petitioner an Appointment Notice, DHS-170, in English, for an appointment for December 21, 2020, at 11:00 a.m. Department Exhibit 1, pgs. 21-22. On December 21, 2020, the Department Caseworker sent Petitioner a Notice of Missed Appointment, DHS-254, in English, for Petitioner to call to reschedule her appointment by January 3, 2021, or her application would be denied. Department Exhibit 1, pg. 23.

On January 4, 2021, the Department Caseworker sent Petitioner a Notice of Case Action, DHS-1605, in English, that her application submitted on December 4, 2020, was denied for failure to complete the required interview to determine FAP eligibility. Department Exhibit 1, pgs. 24-27. On January 12, 2021, the Department received a hearing request from Petitioner, contesting the Department's negative action because the Department Caseworker did not call her on December 21, 2020, and to inform the Department that she did not speak English and requesting a Spanish interpreter. BAM 105, 130, 210, 220, and 600. BEM 400 and 500.

During the hearing, the Department Caseworker reviewed her case notes to say that she called Petitioner on December 17, 2020, but she did not pick up and she left her a message. However, the Appointment Notice said that she would be calling the

Petitioner on December 21, 2020, at 11:00 a.m. The Department Caseworker did not have any notes in her case comments that she called Petitioner on December 21, 2020.

In addition, the Petitioner filled out an application in Spanish, but all the notices sent to the Petitioner were in English, not Spanish. Since the Petitioner filled out the application in Spanish, the Department should have contacted her to determine if she needed her notices to also be in Spanish or if she had someone to read notices to her in Spanish. In her hearing request, the Petitioner stated that she needs an interpreter if the Department Caseworker does not speak Spanish. During the hearing, the Department Caseworker changed the notices on BRIDGES so that the Petitioner would in the future receive notices in Spanish and that an interpreter was required to accommodate the Petitioner.

[MDHHS - Limited English Proficiency Guidelines \(michigan.gov\)](#)

Paragraph 3: *Our Department will provide written translation, in Spanish and Arabic, for Vital Documents used in our programs. Other forms or written material may be translated as needed.*

[MDHHS - Bilingual Interpreter Services \(michigan.gov\)](#)

Paragraph 1: *The Department of Health and Human Services will arrange and pay for the cost of a bilingual interpreter to be present at all interviews or situations where an interpreter is necessary and appropriate.*

BAM 105, pg. 15

Assisting the Client

All Programs

The local office must assist clients who ask for help in completing forms, gathering verifications, and/or understanding written correspondence sent from the department. Particular sensitivity must be shown to clients who are illiterate, disabled or **not** fluent in English.

Note: If such assistance requires interpreter services and the local office is unable to identify an interpreter service provider please escalate the request to your county's business service center and they will provide guidance on how to assist the client.

The poster, DHS Publication 765, Applying for Assistance, must be displayed in the local office lobby. The front page of the application form covers the same information. These documents tell clients that MDHHS must help persons fill out the application when requested.

Interpretation

The department will provide appropriate interpreters to persons with limited English proficiency (LEP) to afford such persons an equal opportunity to participate in or benefit from MDHHS programs and services. The department and its contracted service providers will take reasonable steps to provide services and information in appropriate languages to ensure that LEP individuals are effectively informed, notified of their rights and responsibilities and can effectively participate in and benefit from MDHHS programs, services and activities.

The provisions described in this policy apply to all MDHHS programs, contract service providers, and sub-recipients who provide direct services to MDHHS clients. Language interpreters will be available for use by clients and applicants in each phase of the service delivery process (for example, telephone inquiries, intake interviews, service delivery, complaints, etc.)

The Department has not met their burden that they followed Department policy because Petitioner was not accommodated with her language barriers with Spanish notices. Since she filled out her application using the Spanish application, all subsequent notices should have been sent in Spanish. In addition, the Department Caseworker did not have any notes in her case comments that she called the Petitioner on December 21, 2020.

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 the Petitioner's [REDACTED], 2020 FAP application because she failed to complete the required interview, because the Petitioner was not accommodated with English notices when the Petitioner speaks Spanish. In addition, the Department Caseworker did not have any notes in her case comments that she called the Petitioner on December 21, 2020.

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. Redetermine Petitioner's FAP eligibility retroactive to the [REDACTED], 2020, FAP application by conducting the required interview with a notice written in Spanish and an interpreter for the call to accommodate Petitioner's language barriers.
2. Based on policy, the Department should provide Petitioner with written notification of the Department's revised eligibility determination and issue Petitioner any retroactive benefits she may be eligible to receive, if any.

CF/hb



Carmen G. Fahie
Administrative Law Judge
for Elizabeth Hertel, 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

Kent County via electronic mail

BSC3 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]
MI [REDACTED]