



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: March 19, 2021
MOAHR Docket No.: 21-000341
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 March 10, 2021, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Ruby Anderson, Assistance Payments Supervisor and Bernetta Travick, Eligibility Specialist.

ISSUE

Did the Department properly process and deny Petitioner's application for Food Assistance Program (FAP) and Family Independence Program (FIP) 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 for FAP and FIP benefits.
2. On October 2, 2020, the Department sent Petitioner a Notice of Missed Interview instructing her to contact the Department by October 24, 2020 to reschedule the interview, otherwise, her FAP application would be denied. (Exhibit A, p. 6)
3. On October 26, 2020, the Department sent Petitioner a Notice of Case Action advising her that her [REDACTED], 2020 FAP application was denied because she failed to complete the interview requirement. The Notice of Case Action further advised Petitioner that if she completes the interview process within 60 days of the application and she is otherwise determined eligible for FAP benefits, her benefits

would be prorated from the date she completed the interview requirement. If she does not complete the interview requirement within 60 days, she will need to reapply. (Exhibit A, pp. 7-11)

4. The Department conceded that it did not send Petitioner an Appointment Notice informing her of the date/time of her scheduled application interview.
5. The October 26, 2020 Notice of Case Action further informed Petitioner that her FIP application was denied because the group's countable earnings exceeded the application income limit for the FIP. (Exhibit A, pp. 7-11)
6. On or around January 20, 2021, the Department received Petitioner's request for hearing, disputing the Department's actions with respect to her FAP and FIP application. (Exhibit A, p. 3)

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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 on January 20, 2021, disputing the Department's actions with respect to her FAP and FIP application. After commencement of the hearing, it was discovered that on or around [REDACTED], 2020, Petitioner submitted an application requesting FAP and FIP benefits. The Department sent Petitioner a Notice of Case Action dated September 8, 2020 denying her [REDACTED], 2020 FAP and FIP application. Petitioner confirmed being aware in September 2020 that her [REDACTED], 2020 application was denied. Although Petitioner testified that in November 2020, she filed a request for hearing disputing the denial of both her [REDACTED], 2020 FAP and FIP application as well as the [REDACTED], 2020 FAP and FIP application, there was no evidence that the Department received the request for hearing. Petitioner testified that

she sent the hearing request to the Department via mail. However, there was insufficient evidence that the request was received by the Department.

BAM 600 (January 2020), pp. 6-7 provides that a request for hearing must be received in the Department local office within 90 days of the date of the written notice of case action. Upon receipt of the September 8, 2020 Notice of Case Action, Petitioner was advised of her hearing rights and the requirement that the Department receive her request for appeal within 90 days, otherwise her hearing request would not be granted. Therefore, because Petitioner's January 20, 2021 hearing request was not timely filed within 90 days of the September 8, 2020, Notice of Case Action, and because the Department did not receive a hearing request from Petitioner prior to that date, the denial of Petitioner's [REDACTED], 2020 FAP and FIP application cannot be addressed with this Hearing Decision. The hearing proceeded with respect to the denial of Petitioner's [REDACTED], 2020 application for FAP and FIP benefits.

In this case, the Department asserted that it denied Petitioner's [REDACTED], 2020 FAP application because she failed to participate in an application interview. For FAP cases, the Department is to conduct an interview at application before approving or denying benefits. BAM 115 (July 2020), p. 18-25. Applicants are required to participate in the FAP interview process. If a client misses an interview appointment, the Department will send a Notice of Missed Interview, advising the client that it is now the client's responsibility to request another interview date. It sends a notice only after the first missed interview. If the client calls to reschedule, the Department will set the interview prior to the 30th day, if possible. If the client fails to reschedule or misses the rescheduled interview, the Department will deny the application on the 30th day. BAM 115, pp.18-24. If the client completes the application process after denial but within 60 days of the application date, the Department is to follow the subsequent processing policy outlined in BAM 115, and issue FAP benefits to Petitioner if determined eligible. BAM 115, pp. 25-26.

At the hearing, the Department conceded that it did not send Petitioner an Appointment Notice informing her of the date/time of her scheduled application interview. Thus, although the Department sent Petitioner a Notice of Missed Interview, the initial interview date and time were unknown. Additionally, although the Department testified that attempts were made to reach Petitioner, it was unclear when these attempts were made and whether the Department received any contact from Petitioner after the missed interview or at any point prior to 60-day application eligibility period outlined in the Notice of Case Action and BAM 115. Because the Department did not send Petitioner an appointment notice advising her of the date, time, and location of the application interview, the Department improperly denied Petitioner's FAP application for failure to complete an interview.

With respect to the denial of Petitioner's [REDACTED], 2020 FIP application, the Notice of Case Action indicates that the Department determined Petitioner's household income was in excess of the FIP income limit. (Exhibit A, pp. 7-11).

In order to receive FIP benefits, financial need must exist. Financial need is established, in part, when a client passes the qualifying deficit test and/or the issuance deficit test. Need is determined to exist when budgetable income is less than the payment standard, which is the maximum benefit amount that can be received by the certified group. BEM 518 (January 2020), pp. 1- 6; BEM 515 (October 2018), pp. 1-5. At application, the Department compares the budgetable income using the qualified earned income disregard for the income month, to the certified group's payment standard for the application month. The group will be ineligible for FIP for the application month if no deficit exists. To perform the issuance deficit test, the Department subtracts budgetable income from the applicable payment standard for the benefit month. Financial need exists if there is at least a \$10 deficit after income is budgeted. If there is no deficit, the group is in eligible for assistance. BEM 518, pp.1-6. Thus, if Petitioner's group's income is less than the payment standard for the month being tested, the group will be eligible for FIP benefits. While it was unclear whether the Department determined Petitioner's group size was two or three, the FIP monthly assistance payment standards (based on EDG participation status and FIP certified group size) are found in RFT 210. See RFT 210 (April 2017), pp. 1-2.

At the hearing, the Department conceded that although it had information indicating that Petitioner was no longer employed and no longer receiving income at the time of her application, it continued to budget and take into consideration earnings. The Department did not identify the exact income amounts relied upon or the total income determined for Petitioner's household, however. Petitioner testified that she was terminated from her employment in August 2020 and received her last paycheck on or around August 14, 2020. Therefore, upon review, the Department did not establish that Petitioner's household had income in excess of the income limit based on her FIP group size.

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 FAP and FIP 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. Register and reprocess Petitioner's [REDACTED], 2020 FAP and FIP application to determine her eligibility for FAP and FIP benefits from the application date, ongoing;
2. Issue FAP and FIP supplements to Petitioner for any benefits she was eligible to receive but did not from the application date, ongoing; and
3. Notify Petitioner in writing of its decision.

ZB/jem



Zainab A. Baydoun
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

Via Email:

MDHHS-Wayne-18-Hearings
BSC4-HearingDecsions
M. Holden
D. Sweeney
B. Sanborn
MOAHR

Petitioner – Via First-Class Mail:

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