



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: June 2, 2021
MOAHR Docket No.: 21-001943
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 May 26, 2021, from Detroit, Michigan. Petitioner was present with her Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by Haysem Hosny, Hearings Coordinator.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) eligibility?

FINDINGS OF FACT

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

1. Petitioner was an ongoing FAP recipient.
2. From January 1, 2021 through April 30, 2021, Petitioner received a monthly FAP allotment of \$ [REDACTED].
3. On March 31, 2021, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefit amount was decreasing to \$ [REDACTED] per month effective May 1, 2021, ongoing (Exhibit A, pp. 6-10).
4. On [REDACTED], 2021, 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 was an ongoing FAP recipient. Between the period of January 1, 2021 through April 30, 2021, Petitioner received a monthly FAP benefit amount of \$[REDACTED]. Effective May 1, 2021, the Department decreased Petitioner's FAP benefit amount to \$[REDACTED]. The Department testified that it decreased Petitioner's FAP benefit amount, as the additional 15% FAP supplement related to the COVID-19 pandemic ended as of April 30, 2021. The Department relied on emergency Department policy stating that FAP recipients who were not receiving the maximum FAP benefit amount for their group size would receive a supplement to increase their monthly FAP benefit amount to the maximum allowed through April 2021. Policy Exception Memorandum issued by the Economic Stability Administration (ESA) in response to the COVID-19 crisis number 2021-03, issued January 13, 2021, updated on April 20, 2021. The Department provided the ESA Memo that it utilized to make its determination (Exhibit A, pp. 11-12). The Department relied on the memorandum and explained that it only approved the increase in benefits through April 2021. The memo includes the maximum amount allowed for each group size, indicating that a group size of one (which is Petitioner's group size) is entitled to \$[REDACTED] per month. The Department argued that since the memo only approved the increase of benefits through April 2021, Petitioner was not entitled to the \$234 per month benefit rate, but rather, a benefit rate of \$[REDACTED].

The Department relied on incorrect policy in its explanation of actions taken. The cited policy merely states that individuals who are FAP recipients would be eligible for the full FAP benefit amount for their group size for the month of April 2021, which is approved on a monthly basis, it does not dictate the maximum monthly allotment for each group size.

The Consolidated Appropriations Act, 2021 (CAA) was federally authorized on December 27, 2020. Under this act, the Federal Nutrition Service (FNS) has authorized the Department to provide a temporary 15% increase in maximum FAP benefits for January – June 2021. This 15% increase will be issued as supplemental FAP benefits in Bridges, with staggered availability dates based on recipient ID. Each month, January through June 2021, FAP recipients will receive a separate supplement, after the regular

monthly benefit issuance has been completed. The 15% supplement will be separate from the Emergency Allotment (EA) payments and is not subject to separate monthly approval. RFT 260, FAP Issuance Tables, has been updated to reflect the new maximum benefit amounts. Policy Exception Memorandum issued by the ESA in response to the COVID-19 crisis number 2021-04, issued January 15, 2021. Department reference table bulletin 2021-008 states that the 15% benefit increase incorporated into RFT 260 has been extended to September 30, 2021. RFB 2021-008 (May 2021), p. 1. Additionally, RFT 260 indicates the maximum FAP benefit amount for a group size of one is \$234, and specifically provides that amount is effective January 1, 2021 through September 30, 2021. RFT 260 (May 2021), p. 1. Once the 15% increase ends effective September 30, 2021, Petitioner will only be potentially eligible for the maximum allowed by policy per RFT 260, which is currently \$[REDACTED]. RFT 260 (October 2020), p. 1.

Petitioner's ongoing FAP benefit amount is \$204 per month. Per policy, Petitioner is eligible for the increased FAP benefit amount of \$234 through September 30, 2021. It is likely that Petitioner has received a monthly supplement to bring her FAP issuance amount up to \$234, as policy dictates that the additional 15% FAP allowance is issued as a supplement. However, the Department did not provide Petitioner's Benefit Issuance Summary showing the amount of FAP benefits that she actually received in May 2021. Therefore, the Department failed to establish that it properly followed policy when it determined Petitioner's FAP eligibility.

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 establish that it acted in accordance with Department policy when it determined Petitioner's FAP benefit eligibility.

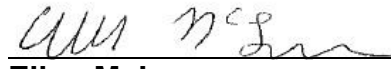
Accordingly, the Department's decision is **REVERSED**.

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 as of May 1, 2021;
2. If Petitioner is eligible for additional FAP benefits, issue supplements she is entitled to receive; and

3. Notify Petitioner of its decision in writing.

EM/jem



Ellen McLemore
Administrative Law Judge

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-Macomb-36-Hearings
BSC4-HearingDecisions
M. Holden
D. Sweeney
MOAHR

Petitioner - Via USPS:

[REDACTED], MI [REDACTED]

Authorized Hearing Rep. - Via USPS:

[REDACTED], MI [REDACTED]