



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: June 18, 2021  
MOAHR Docket No.: 21-002250  
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, a hearing was held on June 2, 2021.

Petitioner personally appeared and testified unrepresented.

The Department of Health and Human Services (Department) was represented by Amanda Fields, APS and Samantha Ball, APW.

Petitioner Exhibit I.16 was offered and admitted into the record.

Department Exhibit A.69 was offered and admitted into the record.

**ISSUE**

Did the Department properly process Petitioner's SER and 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 and was approved utility payment for SER. Exhibit A.10-13.
2. On [REDACTED] 2021 Petitioner filed a new SER utility assistance application. On [REDACTED] 2021 the department denied Petitioner's application on the grounds

that only one payment for heat and non-heat electricity is permitted by policy during the fiscal year. Exhibit A.14-16.

3. On March 1, 2021 Petitioner's FAP redetermination was processed. On March 12, 2021 the central policy office issued ESA Memo 2021-12 COVID 19 Temporary Status Exemption for FAP. Exhibit A.30-37. On March 31, 2021 the Department closed Petitioner's FAP on the grounds that she was an ineligible student. Exhibit A.8-9.
4. On [REDACTED] 2021 Petitioner provided proof that she met a temporary [REDACTED] status exemption.
5. On [REDACTED] 2021 the Department reinstated Petitioner's FAP benefits as of April 1, 2021.
6. On [REDACTED] 2021 Petitioner filed a hearing request.

### **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 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.

Applicable policy to Petitioner's SER dispute is found in SER or ERM 301. That policy in effect at the time of Petitioner's second application states in part that the MDHHS will only issue one eligible utility payment during the fiscal year. Exhibit A.14.

As noted, in the Findings of Fact, the Department denied Petitioner's [REDACTED], 2021 SER application on the grounds that "DHHS will only issue one payment for heat and one payment for non-heat electricity between October 1 and September 30 each year." Petitioner had a prior benefit issued in October 2020. Exhibit A.14. As noted above, this policy is found in SER 301.

Petitioner argues that it is not common knowledge what a fiscal year constitutes and therefore she should be exempted from the policy. However, the undersigned takes judicial notice that a fiscal year runs from October 1 to September 30 each year for the very fact that such is common knowledge. Moreover, Petitioner was given this explanation in the SER denial.

Petitioner also argues that a DHHS web site states that during COVID the Department was allowing more than one SER payment. The date Petitioner copied the MDHHS language from a web site is not identified. More important, policy is controlling. Here, Petitioner received all the SER benefits she was entitled to. Petitioner cannot prevail on the grounds that she lacks common knowledge and/or knowledge of DHHS policy.

Regarding Petitioner's appeal as to her FAP closure, Petitioner argues that the Department failed to keep her case open for the month of [REDACTED] 2021 as there was a policy change on [REDACTED] 12, 2021 allowing [REDACTED] a temporary COVID exemption to continued FAP payments. Petitioner is correct that the Department closed Petitioner's FAP effective April 1, 2021 based on the student status policy. Department evidence shows that Petitioner did not submit verification of temporary student status until April 12, 2021. More importantly, the Department testified that it reinstated Petitioner's FAP retroactively to April 1, 2021 and thus there were no loss of FAP benefits.

It was unclear what Petitioner disputed. At the administrative hearing, Petitioner admitted that she had not checked her EBT card. Petitioner failed to rebut the Department's testimonial evidence that Petitioner's benefits were reinstated and retroactive to April 2021. Based on the evidence of record, Petitioner received all of the FAP benefits to which she was entitled.

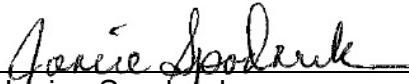
It is noted that Petitioner submitted two sets of statements to MOAHR after the administrative hearing which were not agreed upon at the administrative hearing. Such constitutes ex parte communication. As such, they were not admitted as evidence and thus, do not constitute evidence of record.

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 correctly processed Petitioner's SER and FAP benefits, considering all of the evidence of record. The Department's actions are upheld.

**DECISION AND ORDER**

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

JS/ml



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Janice Spodarek  
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**

Renee Olian  
Kalamazoo County DHHS – via electronic  
mail

BSC3 – via electronic mail

T. Bair – via electronic mail

E. Holzhausen – via electronic mail

M. Holden – via electronic mail

D. Sweeney – via electronic mail

**Petitioner**

██████████ via first class mail  
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