



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: June 25, 2021
MOAHR Docket No.: 21-002395
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 June 16, 2021. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Lori Turner, Eligibility Specialist.

ISSUE

Did Petitioner submit a timely hearing request with respect to Food Assistance Program (FAP) supplements and previous Michigan Office of Administrative Hearings and Rules (MOAHR) decisions?

If so, did the Department properly issue FAP supplements to Petitioner based upon previous MOAHR decisions?

Did the Department properly deny Petitioner's Family Independence Program (FIP) Application?

Did the Department properly issue pandemic FAP supplements to Petitioner?

Did Petitioner submit a proper hearing request related to the Peace Map or Piece Map program?

If so, did the Department properly deny or fail to issue benefits to Petitioner for her three children?

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 January 23, 2019, a hearing was held before an Administrative Law Judge (ALJ) of the Michigan Administrative Hearing System (MAHS), now known as MOAHR, in docket number 18-013323 to determine whether the Department had properly calculated Petitioner's Food Assistance Program (FAP) benefit rate.
2. On the same day, a decision was issued by the ALJ holding that the Department had not satisfied its burden of proof in showing that it acted in accordance with Department policy in calculating Petitioner's FAP benefit rate for October 2018 through December 2018 and ordering the Department to recalculate Petitioner's eligibility for the same period, seek verification of employment or loss of employment if necessary, and provide supplements to Petitioner if she was otherwise entitled to receive them.
3. In November 2019, another hearing was held before the undersigned to determine Petitioner's FAP eligibility based upon her Application for benefits associated with the [REDACTED] 2020 Notice of Case Action; the Hearing Decision ordered the Department to reprocess Petitioner's Application and issue supplements to Petitioner for benefits not previously received.
4. On [REDACTED] 2021, the Department received Petitioner's Application for Family Independence Program (FIP) and FAP benefits.
5. FAP benefits were approved based upon the [REDACTED] 2021 Application for a group size of five.
6. FIP benefits were denied because the Department alleged that Petitioner exceeded the Federal Time Limit for receipt of benefits.
7. Petitioner has received FIP benefits in 47 months according to the Michigan FIP Time Limit counter.
8. On December 21, 2018, the Department issued three supplements totaling \$226.00 for October, November, and December 2018.
9. On March 23, 2021, the Department issued \$54.00 in FAP benefits to Petitioner.
10. On April 3, 2021, the Department issued \$222.00 in FAP benefits to Petitioner.
11. On April 24, 2021, the Department issued the following FAP benefits to Petitioner:
 - a. \$867.00 supplement for March 2021
 - b. \$8.00 supplement for March 2021

- c. \$33.00 supplement for April 2021
 - d. \$674.00 supplement for April 2021
12. On May 6, 2021, the Department received Petitioner's request for hearing disputing the Department's issuance of supplements based upon the decision from January 2019 as well as the hearing from November 2020, the Department's denial of her FIP application, the issuance of FAP pandemic benefits, and finally, the Department's failure to issue compensation to Petitioner for her three children taking online classes.

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.

In this case, Petitioner requested a hearing disputing the Department's denial of her FIP Application from [REDACTED] 2021, the Department's failure to issue appropriate FAP pandemic supplements, the Department's failure to issue supplements based upon MAHS/MOHR docket number 18-013323 as well as a second hearing decision by the undersigned issued in November 2020, and finally, the Department's failure to issue compensation for her three children who were enrolled in online classes.

FIP Eligibility

Starting with the first issue of Petitioner's FIP eligibility, the Department denied Petitioner's Application because she had exceeded the Federal Time Limit for receipt of FIP benefits. FIP is a program which is funded primarily by the Temporary Assistance to Needy Families (TANF) program, a program created and monitored by the federal government. BEM 234 (July 2013), p. 1. TANF has a 60-month lifetime limit on assistance for adult-headed families beginning October 1, 1996. *Id.* Each month an

individual receives federally funded FIP, the individual receives a count of one month. BEM 234, p. 2. A family is ineligible when a mandatory member of the FIP group reaches the 60 TANF-funded month federal time limit. *Id.* Since FIP is also funded by State funds and not exclusively by Federal funds, a State FIP lifetime limit is also applied. BEM 234, p. 4. The State lifetime limit is 48 months effective October 1, 1996. *Id.* Each month an individual receives FIP benefits while in Michigan is counted towards the limit, regardless of the funding source. *Id.* A family is ineligible for FIP when a mandatory group member in the program group reaches the 48-month state time limit. *Id.* Any month that is state funded is not a countable month toward the federal time limit count. BEM 234, p. 3. However, months which are federally funded are countable toward the state counter unless a deferral or exemption applies. *Id.* In support of its case, the Department presented a Michigan FIP Time Limit counter, but not a Federal Time Limit counter. The Michigan FIP Time Limit counter indicates Petitioner has received 47 months of FIP benefits of which 6 were exempted and 41 were countable. Based upon this information, Petitioner is still eligible for 7 months of Michigan issued FIP benefits. However, the Department denied Petitioner's Application based upon the Federal Time Limits and not the Michigan Time Limit. The Department did not provide any evidence of which months were counted for purposes of Federal Time Limit, which months may have been exempted from the Federal Time Limit, or if any other months beyond those listed on the Michigan FIP Time Limits counter were considered. Therefore, the Department has not met its burden of proof in establishing that it properly denied Petitioner's March 2021 Application for FIP benefits.

Pandemic FAP Supplements

Turning next to Petitioner's assertion that the Department failed to issue appropriate pandemic FAP supplements to her, in support of its case, the Department presented a Benefit Summary Inquiry showing FAP benefits issued to Petitioner from March 2021 through May 2021. Per the Economic Stability Administration (ESA) Memorandum (Memo) 2021-03 (March 10, 2021 and April 20, 2021), active FAP groups not currently receiving the maximum benefit rate for their group size will receive a supplement to bring their monthly benefit up to the maximum amount allowed for their group size. Groups already receiving the maximum benefit will not receive an additional supplement. *Id.* FAP household will not be notified via individual correspondence of the change and the only notification was issued via press release. *Id.* Groups consisting of five members have a maximum benefit rate of \$929.00 per month. *Id.*; RFT 260 (January 2021), p. 1. In addition, FAP households were eligible for an additional 15% increase in maximum FAP benefits for the period January 2021 through June 2021. ESA Memo 2021-04 (January 15, 2021). This 15% increase was to be issued as a payment separate from the group's regular monthly benefit issuance. *Id.*

In March 2021, Petitioner was issued an initial FAP benefit of \$54.00. On April 24, 2021, Petitioner was issued two additional supplements for March 2021, one of \$867.00 and one of \$8.00. These three payments combined total \$929.00, the maximum benefit rate for a group size of five. RFT 260, p. 1. No other supplements were issued for March 2021. On April 3, 2021, the Department issued a FAP benefit of \$222.00 for April 2021 and then issued two supplements on April 24, 2021 for April 2021. The first

supplement was for \$674.00 and the second supplement was for \$33.00. The combined total FAP issuance for April 2021 was \$929.00, the full FAP benefit rate. No other supplements were issued for April 2021. Given the evidence presented and ESA Memo 2021-04, the Department failed to issue the additional 15% FAP supplement to Petitioner for March and April 2021.

FAP Supplements based upon MOAHR Hearing Decisions

Next, Petitioner asserts that the Department failed to issue supplements based upon previous MOAHR decisions from January 2019 and November 2020. Per policy, individuals must request a hearing within 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (October 2018 & March 2021), p. 6. Furthermore, requests for rehearing and/or reconsideration must be received by MOAHR within 30 days of the date that the hearing decision is mailed. BAM 600, p. 47. Finally, traditional notices of case action are not issued by the Department when implementing a hearing decision because the hearing decision serves as the notice of the action except in situations where a redetermination is required. BAM 600, pp. 42-43.

In this situation, Petitioner is seeking to dispute the actions of the Department taken or not taken after hearing decisions were issued in January 2019 and November 2020. If Petitioner had been seeking a rehearing or reconsideration, the request must have been received by February 22, 2019 based upon the first decision, or 30 days after the November 2020 decision, in other words, sometime in December 2020. If Petitioner had been filing a traditional request for hearing based upon the Department's actions and the hearing decision, Petitioner's request for hearing must have been received by the local office by April 23, 2019 for the January 2019 decision or 90 days after the November 2020 decision, in other words, in February 2021. Petitioner's request was received by MOAHR on April 19, 2021 and then by the local office on May 6, 2021. Petitioner's request does not comply with the timeliness requirements for a traditional hearing request, nor does it comply with the requirements for a rehearing or reconsideration. Her request was received more than two years after the January 2019 decision and approximately five months after the November 2020 decision. Therefore, Petitioner's request must be dismissed with respect to the portions related to the supplements after the January 2019 and November 2020 decisions.

Peace Map or Piece Map Program

Finally, Petitioner disputed the Department's failure to issue payments to her for her children while they were attending classes online full time. Petitioner indicated at the hearing that the program was called Peace Map or Piece Map. This is not a program over which the undersigned has jurisdiction. Per policy, clients have the right to contest Department decisions affecting eligibility or benefits levels for Medical Assistance (MA) Program, Family Independence Program (FIP), State Disability Assistance (SDA), Food Assistance Program (FAP), Child Development and Care (CDC), and State Emergency Relief (SER). BEM 100 (January 2021), pp. 1-5; BAM 600, p. 1; ERM 102 (October 2020), p. 2. Since this is not a program over which the undersigned has jurisdiction,

Petitioner's request for hearing must be dismissed as it relates to the Peace Map or Piece Map program.

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 failed to issue the 15% increase for FAP benefits pursuant to ESA Memo 2021-04 and failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's Family Independence Program (FIP) Application from March 2021.

DECISION AND ORDER

Petitioner's request for hearing is **DISMISSED** with respect to the **FAP** supplements based upon the **January 2019 and November 2020 hearing decisions**.

Petitioner's request for hearing is **DISMISSED** with respect to **the Peace Map or Piece Map program**.

The Department's decision is **REVERSED** with respect to the denial of Petitioner's **FIP** Application and issuance of the **15% FAP supplements**.

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. Issue the 15% FAP supplements to Petitioner in accordance with ESA Memo 2021-04 beginning as of her March 2021 Application for FAP benefits;
2. Redetermine Petitioner's FIP eligibility effective March 16, 2021;
3. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,
4. Notify Petitioner in writing of its decision.

AMTM/cc



Amanda M. T. Marler
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-17-Hearings
BSC4-HearingDecision
D. Sweeney
M. Holden
B. Sanborn
MOAHR

Petitioner- Via USPS:

