



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: September 9, 2022  
MOAHR Docket No.: 22-003411  
Agency No.: [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 September 1, 2022, from Lansing, Michigan. The Petitioner was represented by himself and his social worker, Jaime Vogtman. The Department of Health and Human Services (Department) was represented by Kaylie Polk, Eligibility Specialist.

### **ISSUE**

Did the Department properly determine the 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. The Petitioner was a recipient of FAP benefits.
2. On May 19, 2022, the Department Caseworker received the Mid-Certification Contact Notice for June 2022 and supporting documentation for FAP eligibility, which was submitted timely. Department Exhibit 1, pgs.6-8.
3. On June 22, 2022, the Department Caseworker processed the Mid-Certification and approved FAP benefits, but due to worker error did not certify the case.
4. On July 11, 2022, the Petitioner contacted the Department Caseworker to report that he had not received his FAP benefits for the month of July.

5. On July 12, 2022, the Department Caseworker reviewed the case and discovered that the FAP case had not been certified. She completed the FAP certification and sent a notice.
6. On July 12, 2022, the Department Caseworker sent the Petitioner a Notice of Case Action, DHS 1605, that his FAP benefits were approved for \$183 a month effective July 1, 2022, through June 30, 2023. Department Exhibit 1, pgs. 10-14.
7. On July 16, 2022, the Department Caseworker sent the Petitioner a Notice of Case Action, DHS 1605, that his FAP benefits were decreased to \$60 a month effective August 1, 2022, through June 30, 2023, due to the loss of the heat/utility standard (including phone) deduction of \$559. Department Exhibit 1, pgs. 15-19.
8. On July 22, 2022, the FAP Policy Unit stated that the Petitioner had a mid-certification due by June 30, 2022, but it was not processed until July 12, 2022, which resulted in the Petitioner not being in the group for the end of the month processing for July benefits, which made him ineligible for the \$20.01 LIHEAP payment. Department Exhibit 1, pg. 20.
9. On July 26, 2022, the Department Caseworker sent the Petitioner a Notice of Case Action, DHS 1605, that his FAP benefits were increased to \$69 from \$60 a month effective August 1, 2022, through June 30, 2023, due to receiving the \$30 deduction for the telephone standard. Department Exhibit 1, pgs. 22-26.
10. On July 27, 2022, the Department received a hearing request from the Petitioner, contesting the Department's negative action.
11. On July 29, 2022, the FAP Policy Unit stated that the Petitioner's case was not processed timely so he will not receive the \$20.01 even if he did qualify and the payment is based on a period in time not on a rolling payment based on when the case was processed with no exceptions. Department Exhibit 1, pg. 27.

### **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 was a recipient of FAP benefits. On May 19, 2022, the Department Caseworker received the Mid-Certification Contact Notice for June 2022 and supporting documentation for FAP eligibility, which was submitted timely. Department Exhibit 1, pgs.6-8. On June 22, 2022, the Department Caseworker processed the Mid-Certification and approved FAP benefits, but due to worker error did not certify the case.

On July 11, 2022, the Petitioner contacted the Department Caseworker to report that he had not received his FAP benefits for the month of July. On July 12, 2022, the Department Caseworker reviewed the case and discovered that the FAP case had not been certified. She completed the FAP certification and sent a notice. On July 12, 2022, the Department Caseworker sent the Petitioner a Notice of Case Action, DHS 1605, that his FAP benefits were approved for \$183 a month effective July 1, 2022, through June 30, 2023. Department Exhibit 1, pgs. 10-14.

On July 16, 2022, the Department Caseworker sent the Petitioner a Notice of Case Action, DHS 1605, that his FAP benefits were decreased to \$60 a month effective August 1, 2022, through June 30, 2023, due to the loss of the heat/utility standard (including phone) deduction of \$559. Department Exhibit 1, pgs. 15-19. On July 22, 2022, the FAP Policy Unit stated that the Petitioner had a mid-certification due by June 30, 2022, but it was not processed until July 12, 2022, which resulted in the Petitioner not being in the group for the end of the month processing for July benefits, which made him ineligible for the \$20.01 LIHEAP payment. Department Exhibit 1, pg. 20.

On July 26, 2022, the Department Caseworker sent the Petitioner a Notice of Case Action, DHS 1605, that his FAP benefits were increased to \$69 from \$60 a month effective August 1, 2022, through June 30, 2023. Department Exhibit 1, pgs. 22-26. On July 29, 2022, the FAP Policy Unit stated that the Petitioner's case was not processed timely so he will not receive the \$20.01 even if he did qualify where the payment is based on a period in time not on a rolling payment based on when the case was processed with no exceptions. Department Exhibit 1, pg. 27.

During the hearing, the Department stated that they could not change the outcome of department error because the worker approved the Petitioner for FAP benefits but failed to certify his case resulting in the Petitioner not receiving the \$20.01 LIHEAP deduction, which would have qualified him for the heat/utility standard deduction of \$559. The Petitioner submitted his mid-certification timely. He should not be penalized for the Department's error. The Petitioner FAP benefits have decreased from \$183 per month to \$69 per month, which is a significant decrease in FAP benefits through no fault of his.

This Administrative Law Judge finds that the Department has not met their burden that they followed Department policies and procedures in the processing of the Petitioner's mid-certification. The Petitioner submitted his application timely before the due date where the Department is conceding that they received it timely. However, the Department Caseworker failed to certify the case timely, and the Petitioner had to contact her in July after he did not receive his FAP benefits. She certified it promptly, but since it was after June 30, 2022, the Petitioner was not included in the batch to

receive the LIHEAP credit. The Petitioner should not be penalized with the loss of FAP benefits and LIHEAP payment due to Department error.

**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 failed to process the Petitioner's FAP mid-certification timely resulting in a loss of FAP benefits due to the Petitioner not receiving the LIHEAP payment of \$20.01 and resulting in a further loss of the \$559 of the heat/utility standard.

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, initiating a redetermination of the Petitioner's eligibility for FAP retroactive to his mid-certification that affected FAP benefits for July 2022 and the \$20.01 payment of his July 2022 LIHEAP.

Based on policy, the Department should provide the Petitioner with written notification of the Department's revised eligibility determination and issue the Petitioner any retroactive benefits she may be eligible to receive, if any.

CF/cc



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**Carmen G. Fahie**  
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-Electronic Mail :**

**Interested Parties**

MDHHS-Bay-Hearings  
BSC2-HearingDecisions  
D. Sweeney  
M. Holden  
MOAHR

**Via-First Class Mail :**

**Petitioner**

[REDACTED]  
[REDACTED], MI [REDACTED]