



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: December 1, 2022
MOAHR Docket No.: 22-005059
Agency No.: ██████████
Petitioner: ██████████

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 November 30, 2022, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Meshawn Coleman, Eligibility Specialist.

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. On October 11, 2022, Petitioner submitted a handwritten statement stating that she was temporarily residing at a residential address (Exhibit A, p. 8).
3. On October 18, 2022, the Department sent Petitioner a Notice of Case Action informing Petitioner that her FAP benefits were decreasing effective November 1, 2022, ongoing (Exhibit A, pp. 13-17).
4. On ██████████ 2022, 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. Petitioner was previously receiving the homeless shelter deduction. On October 11, 2022, Petitioner submitted notification to the Department that she was temporarily residing at a residential address. As a result, the Department removed Petitioner's homeless shelter deduction. As it follows, Petitioner's FAP benefit amount was reduced.

FAP allowable expenses includes: (i) basic shelter expenses such as rent, mortgage, a second mortgage, home equity loan, required condo or maintenance fees, lot rental or other payments including interest leading to ownership of the shelter occupied by the FAP group, property taxes, state and local assessments and insurance on the structure, and home repairs of a home which was substantially damaged or destroyed due to a natural disaster; (ii) the h/u standard or individual utility standards; (iii) utility installation fees charged by the utility provider, excluding deposits; and (iv) well/septic installation and maintenance. BEM 554, pp. 13-25. Groups in which all members are homeless and do not receive free shelter, may receive a homeless shelter deduction. See RFT 255, Food Assistance Standards. BEM 554, p. 13. The FAP group has the choice between using their actual shelter expense or the homeless shelter deduction. BEM 554, p. 13. Policy defines homeless as persons that do not reside in a permanent dwelling or have a fixed mailing address. BPG Glossary (January 2022), p. 33. A homeless person is an individual who lacks a fixed and regular nighttime residence or whose nighttime residence is: (i) supervised public or private shelter designed to provide temporary accommodations for the homeless; (ii) halfway house or similar accommodation which provides a temporary residence for individuals released from institutions; (iii) home of another person; or (iv) place not designed or ordinarily used as a dwelling (e.g., building entrance or hallway, bus station, park, campsite, vehicle). BPG Glossary, p. 33.

At the hearing, Petitioner testified that she is temporarily residing with her daughter and her mother. Petitioner moves back and forth between her mother and her daughter's residences, until she can obtain a spot at a homeless shelter. Therefore, Petitioner is an individual without a fixed nighttime residence and is temporarily residing at the home of another person. Per policy, Petitioner is homeless. Thus, Petitioner is entitled to the

homeless shelter deduction. As it follows, the Department did not act in accordance with policy when it removed the homeless shelter deduction from Petitioner's FAP budget. Therefore, the Department did not act in accordance with Department policy when it determined Petitioner's FAP eligibility.

DECISION AND ORDER

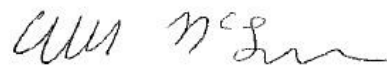
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it determined Petitioner's FAP eligibility.

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 November 1, 2022, ongoing;
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/tm



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-Electronic Mail :

DHHS
Chelsea McCune
Macomb County DHHS Warren Dist.
27690 Van Dyke
Warren, MI 48093
**MDHHS-Macomb-20-
Hearings@michigan.gov**

Interested Parties

M. Holden
D. Sweeney
BSC4

Via-First Class Mail :

Petitioner

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