



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]

Date Mailed: July 21, 2023
MOAHR Docket No.: 23-002374
Agency No.: [REDACTED]
Petitioner: [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 July 13, 2023. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Amber Gibson, Hearing Facilitator. The Department submitted Department Exhibit, pgs. 1-59, that were admitted and made a part of the record. The Petitioner submitted Petitioner Exhibit, pgs. 1-21, that were admitted and made a part of the record.

ISSUE

Did the Department properly deny the Petitioner's application for the Food Assistance Program (FAP)?

Did the Petitioner request a timely hearing for his FAP application denial of December 9, 2022?

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 November [REDACTED] 2022, the Petitioner applied for FAP benefits.
2. On November [REDACTED] 2022, the Petitioner reapplied for FAP benefits, which the Department treated as a duplicate application because there was already a FAP application for an earlier date within the same 30-day period.

3. On November █ 2022, the Department Caseworker sent the Petitioner a Notice of Missed Appointment, DHS 254, for a required FAP telephone interview on September 28, 2022, to determine FAP eligibility.
4. On November 28, 2022, the Department Caseworker called and spoke to the Petitioner's authorized representative, █ █ who stated that her husband, the Petitioner, was handling the telephone interview and provided his phone number where the Department Caseworker called the Petitioner and left a message at 2:08 p.m. and called again at 2:33 p.m. and did not leave a message.
5. On December 9, 2022, the Department denied the Petitioner's FAP application for failure to complete the required phone interview with a Notice of Case Action, DHS 1605, sent to the Petitioner.
6. On February █ 2023, the Petitioner reapplied for FAP benefits with a request for hearing request in the case notes.
7. On April 11, 2023, the Department received a hearing request from the Petitioner, contesting the Department negative action.

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 applied for FAP benefits on November █ 2022. On November █ 2022, the Petitioner reapplied for FAP benefits, which the Department treated as a duplicate application because there was already a FAP application for an earlier date within the same 30-day period. On November 21, 2022, the Department Caseworker sent the Petitioner a Notice of Missed Appointment, DHS 254, for a required FAP telephone interview on September 28, 2022, to determine FAP eligibility.

On November 28, 2022, the Department Caseworker called and spoke to the Petitioner's authorized representative, █ █ who stated that her husband, the Petitioner, was handling the telephone interview and provided his phone number where the Department Caseworker called the Petitioner and left a message at 2:08 p.m. and called

again at 2:33 p.m. and did not leave a message. On December 9, 2022, the Department denied the Petitioner's FAP application for failure to complete the required phone interview with a Notice of Case Action, DHS 1605, sent to the Petitioner. On February █ 2023, the Petitioner reapplied for FAP benefits with a request for hearing request in the case notes. On April 11, 2023, the Department received a hearing request from the Petitioner, contesting the Department negative action. BAM 110, 115, 130, and 220. BEM 500, 501, 550, and 554.

During the hearing, the Department stated that the Petitioner's hearing request was not timely because it was beyond the 90 days. The Department denied the Petitioner's FAP application on December 9, 2022, but a written hearing request was not received until April 11, 2020. The Petitioner countered that he had asked for a hearing verbally through the Department Caseworker in January 2023, but it was not recorded in the case notes. He stated that he put a request for hearing in writing when he reapplied on February █ 2023. A review of the February █ 2023, FAP application verified the hearing request. As a result, the Petitioner's hearing request is timely.

The Petitioner submitted his phone records from the contested time period that showed that he had made multiple calls to the Department Caseworker on November 29, 2022, December 2, 2022 (3 calls), December 6, 2022, December 8, 2022, and December 9, 2022 (3 calls) before his case was denied on December 9, 2022, to complete the required phone interview for FAP eligibility. There were no record of the Petitioner's phone calls on the Department Caseworker's case notes and the phone log sheet was not pulled by the Hearing Coordinator.

As a result, the Administrative Law Judge finds that the Petitioner did attempt to call the Department back to complete the required FAP telephone hearing before the case was denied on December 9, 2022.

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 denied the Petitioner's FAP application because the required FAP telephone interview was not completed.

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 of initiating a redetermination of the Petitioner's eligibility for FAP retroactive to his FAP application dated November 9, 2022, by sending out a new Appointment Notice, DHS 170 for a FAP telephone interview to redetermine FAP eligibility for the contested time period.

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/he may be eligible to receive, if any.



CF/dm

Carmen G. Fahie
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-Electronic Mail :

DHHS
Amber Gibson
Ingham County DHHS
**MDHHS-Ingham-
Hearings@michigan.gov**

HoldenM

SweeneyD1

BSC2HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner

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