



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: October 13, 2023
MOAHR Docket No.: 23-004210
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 October 3, 2023, from Lansing, Michigan. The Petitioner was represented by [REDACTED] Mother and Authorized Hearing Representative (AHR). The Department of Health and Human Services (Department) was represented by Lekeitia Cokley, Assistance Payments Supervisor (APS).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-10.

ISSUE

Did the Department properly determine Petitioner's eligibility for the Food Assistance Program (FAP)?

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 [REDACTED] 2023, Petitioner submitted a Renew Benefits for his FAP case and reported having income from employment at [REDACTED] [REDACTED] for an average of 17 hours per week at \$15.00 per hour. (Exhibit A, pp. 6-8)
2. For February 2023, Petitioner was issued \$ [REDACTED] in initial FAP benefits and \$ [REDACTED] in supplemental FAP benefits. (Exhibit A, p. 9)

3. The APS reviewed the electronic case record and did not see that any written notice of case action was issued regarding the FAP eligibility determination as of February 2023. (APS Testimony)
4. In April 2023, Petitioner mailed in a change report with changes to address and shelter expense. (Exhibit A, p. 4)
5. On July 21, 2023, Petitioner filed a hearing request contesting the Department's determination regarding the amount of his FAP benefits, including not receiving a \$ [REDACTED] in extra emergency FAP benefits for February 2023 and not updating his case for the changes reported in April 2023. (Exhibit A, pp. 3-4)

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 calculating the FAP budget, the Department considers income from employment. The Department counts the gross wages. BEM 501, July 1, 2022, pp. 6-7. The Department utilized past income to prospect income for the future unless changes are expected. The Department is to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month. BEM 505, October 1, 2022, p. 6.

For FAP, a shelter expense is allowed when the FAP group has a shelter expense or contributes to the shelter expense. BEM 554, (April 1, 2023), p. 13. Shelter expenses include property taxes and insurance. BEM 554 p. 15. The heat/utility (h/u) standard covers all heat and utility costs including cooling, except actual utility expenses, for example, installation fees etc. FAP groups that qualify for the h/u standard do not receive any other individual utility standards. FAP groups whose heat is included in their rent may still qualify for the h/u standard. Some additional ways include but are not limited to, receipt of the Home Heating Credit (HHC) or a Low Income Home Energy Assistance Payment (LIHEAP). The amount of either payment must be greater than \$20 in the month of application or in the immediately preceding 12 months prior to the application month. BEM 554, p. 16. FAP groups who pay for cooling (including room air conditioners) are eligible for the h/u standard if, they have the responsibility to pay for non-heat electric. BEM 554 p. 18. FAP groups not eligible for the h/u standard who have other utility expenses or contribute to the cost of other utility expenses are eligible for the individual

utility standards. Use the individual standard for each utility the FAP group has responsibility to pay. BEM 554 p. 22.

Upon certification of eligibility results, the Department automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. The notice of case action is printed and mailed centrally from the consolidated print center. BAM 220, October 1, 2022, p. 2.

In this case, the Department did not provide sufficient evidence to review the contested FAP issues. The Department did not include the FAP budgets or any of the verifications utilized for the FAP redetermination eligibility determination effective February 2023. However, even based on the testimony, errors were made in determining FAP eligibility for February 2023. For example, the testimony of the APS indicated the Department utilized the income from a single paystub for the budgeted income, even though more than one paystub for a 30-day period was received. Additionally, it appears that the Department failed to issue a written notice of case action for the February 2023 FAP eligibility determination. Further, no evidence was presented addressing the issues Petitioner's hearing request raised regarding the expected extra \$95.00 emergency FAP supplement under the CARES Act or the processing of the changes with address and shelter expenses reported in April 2023.

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 determined Petitioner's eligibility for FAP as of February 2023.

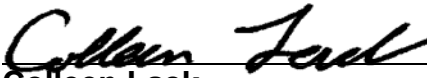
DECISION AND ORDER

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 eligibility for FAP as of February 1, 2023 in accordance with Department policy.

CL/dm



Colleen Lack
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
Richard Latimore
Wayne-Conner-DHHS
**MDHHS-Wayne-57-
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HoldenM

SweeneyD1

BSC4HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner

[REDACTED]

[REDACTED]

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

[REDACTED]

[REDACTED]1