



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
SUZANNE SONNEBORN  
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA  
ACTING DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: October 16, 2023  
MOAHR Docket No.: 23-005590  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Christian Gardocki**

### **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 hearing was held via telephone conference line on October 11, 2023. Petitioner did not participate. [REDACTED] Petitioner's brother-in-law, testified and participated as Petitioner's authorized hearing representative (AHR). The Michigan Department of Health and Human Services (MDHHS) did not participate despite being given at least 15 minutes from the scheduled hearing time to call.

### **ISSUE**

The issue is whether MDHHS properly terminated Petitioner's eligibility for Food Assistance Program (FAP) benefits.

### **FINDINGS OF FACT**

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of July 2023, Petitioner was an ongoing recipient of FAP benefits with a benefit period certified through August 2023.
2. On an unspecified date, MDHHS scheduled a FAP redetermination interview with Petitioner on August 11, 2023, at 10:30 a.m.
3. On August 11, 2023, at 10:30 a.m., MDHHS did not contact Petitioner for an interview.

4. On an unspecified date, MDHHS scheduled a FAP redetermination interview with Petitioner on August 21, 2023, at 1:30 p.m.
5. On August 21, 2023, at 1:30 p.m., MDHHS did not contact Petitioner for an interview.
6. On August 25, 2023, after Petitioner called MDHHS, MDHHS scheduled a FAP redetermination interview with Petitioner on August 28, 2023, at 10:30 a.m.
7. On August 28, 2023, at 10:30 a.m., MDHHS did not contact Petitioner for an interview.
8. On August 31, 2023, MDHHS sent Petitioner notice of FAP closure beginning September 2023.
9. On September 7, 2023, Petitioner's AHR requested a hearing to dispute the closure of FAP benefits.

### **CONCLUSIONS OF LAW**

The Food Assistance Program [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. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a termination of FAP benefits. A Notice of Case Action dated August 31, 2023, stated that Petitioner's case closed beginning September 2023 due to a failure to comply with interview requirements.

For all programs, MDHHS must periodically redetermine an individual's eligibility for active programs. BAM 210 (January 2021) p. 1. The redetermination process includes a thorough review of all eligibility factors. *Id.* Generally, a complete redetermination is required at least every 12 months. *Id.*, p. 3. MDHHS sends the Redetermination form to clients in the month before the expiration of the benefit period. *Id.*, p. 8.

For FAP benefit redeterminations, MDHHS must usually conduct an interview before determining ongoing eligibility. *Id.*, p. 6. FAP groups that have no earned income and in which all adult members are elderly or disabled do not require an interview at redetermination, unless the group requests one or if there are any outstanding issues or questions about the recertification process.<sup>1</sup> *Id.*, p. 7.

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<sup>1</sup> MDHHS has no known definition for "elderly". For FAP, "senior" is defined as being over the age of 60 years. BEM 550 (October 2020) p.1. Barring a specific definition, "elderly" is presumed to be interchangeable with "senior".

Petitioner's AHR testified that MDHHS scheduled Petitioner for an interview on August 11, 2023, at 10:30 a.m. Petitioner's AHR testified that MDHHS failed to call; instead, MDHHS sent notice of another interview to be held on August 21, 2023, at 1:30 p.m. Petitioner's AHR again stated that MDHHS did not call. Petitioner's AHR then stated he called MDHHS on or near August 25, 2023, and was told that another interview would be scheduled for August 28, 2023, at 10:30 a.m.<sup>2</sup> Petitioner's AHR testified that again MDHHS did not call at the scheduled interview time. Petitioner's AHR testified he went to the local office after the third missed interview and was told that a supervisor would call him; Petitioner's AHR testified that a supervisor never did call.

Petitioner's AHR testified that MDHHS failed to call for three scheduled redetermination interviews. The testimony was consistent with the evidence and generally credible. More importantly, the testimony was unrebutted as MDHHS did not participate in the hearing.

Given the evidence, MDHHS failed to establish it called Petitioner at the time of three scheduled FAP redetermination interviews. The evidence also failed to establish that Petitioner failed to participate in the interview process. Thus, the denial of Petitioner's redetermination due to a failure to participate in the interview process must be overturned. As a remedy, Petitioner is entitled to be interviewed to continue FAP benefits beginning September 2023. Presumably, an interview between MDHHS and Petitioner will still have to be held. Under the circumstances of three missed interviews by MDHHS (and an administrative hearing), MDHHS should be extremely accommodating in the scheduling and holding of the interview.

### **DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FAP eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reprocess Petitioner's FAP eligibility beginning September 2023 subject to the finding that Petitioner did not fail to participate in the interview process; and
- (2) Issue notice and benefit supplements, if any, in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/nr



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**Christian Gardocki**  
Administrative Law Judge

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<sup>2</sup> Petitioner testified that he was also told MDHHS telephones were not operable on August 11 and that the specialist was not in the office on August 21.

**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**  
Vivian Worden  
Macomb County DHHS Mt. Clemens  
44777 Gratiot  
Clinton Township, MI 48036  
**MDHHS-Macomb-12-  
Hearings@michigan.gov**

**Interested Parties**  
Macomb 12 County DHHS  
BSC4  
M. Holden  
D. Sweeney  
MOAHR

**Via-First Class Mail :**

**Authorized Hearing Rep.**

[REDACTED], MI [REDACTED]

**Petitioner**

[REDACTED], MI [REDACTED]