

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-016679
Issue No.: 1001; 2000; 3001
Agency Case No.: [REDACTED]
Hearing Date: November 9, 2015
County: WAYNE-DISTRICT 19

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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; 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 9, 2015, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUES

Did the Department properly provide Petitioner and her two children with Medical Assistance (MA) coverage?

Did the Department properly deny Petitioner's Family Independence Program (FIP) application dated [REDACTED]?

Did the Department properly process Petitioner's Food Assistance Program (FAP) application dated [REDACTED]?

Did the Department properly determine Petitioner's FAP eligibility effective [REDACTED], ongoing?

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 [REDACTED], Petitioner applied for Cash Assistance (FIP) benefits. See Exhibit D, p. 1.

2. On [REDACTED], the Department sent Petitioner a Partnership. Accountability. Training. Hope. (PATH) Appointment Notice notifying her of an appointment scheduled on [REDACTED]. See Exhibit B, p. 5.
3. On [REDACTED], the Department sent Petitioner a Verification Checklist and two Verification of Student Information forms (DHS-3380) requesting verification of her children's school attendance. See Exhibit B, pp. 6-11. The verifications were due back by [REDACTED]. See Exhibit B, p. 6.
4. On [REDACTED], the Department sent Petitioner's spouse a Health Care Coverage Determination (determination notice) notifying him that Petitioner and their two children's MA benefits closed effective [REDACTED], ongoing, because she does not live with the applicant (spouse) and is not considered part of the household group, and a request in writing that the assistance or application for assistance be stopped. See Exhibit D, pp. 5-6.
5. On [REDACTED] the Department sent Petitioner's spouse a Notice of Case Action notifying him that the FAP benefits decreased from a group size of four to one effective [REDACTED] because Petitioner and their two children were no longer living with the spouse. See Exhibit D, pp. 3-4.
6. On [REDACTED], the Department received verification of Petitioner's younger child's student information (hereinafter referred to as "Child A"). See Exhibit B, pp. 8-9. However, the Department indicated that it received verification of Petitioner's older child's student information (hereinafter referred to as "Child B") on [REDACTED]. See Exhibit B, pp. 10-11.
7. On [REDACTED], Petitioner applied for FAP and MA benefits. See Exhibit D, p. 2.
8. Petitioner and her two children are ongoing recipients of MA coverage. See Exhibit C, pp. 1-3.
9. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FIP application was denied effective [REDACTED], ongoing, because both children are not compliant with school attendance requirements. See Exhibit B, pp. 16-18.
10. On [REDACTED], the Department testified that it sent Petitioner a Notice of Case Action notifying her that she was denied for FAP benefits for the application month of August 2015.
11. On [REDACTED], the Department testified that the Notice of Case Action also notified Petitioner that she was approved for FAP benefits effective [REDACTED], for only a group size of two (rather than three) for \$357 because Petitioner was found ineligible based on not being student status eligible.

12. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. See Exhibit B, pp. 1-2.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Preliminary matters

First, Petitioner and her two children were originally under the spouse's case profile. However, Petitioner and her two children left the spouse's household, which resulted in the MA benefits terminating effective [REDACTED]. See Exhibit D, pp. 5-6 (spouse's determination notice dated [REDACTED]). As a result, Petitioner applied for MA assistance for both herself and the children on [REDACTED]. See Exhibit D, p. 2. The Department indicated that Petitioner and her two children were approved for MA coverage, which resulted in no lapse of coverage. See Exhibit C, pp. 1-3 (Eligibility Summary). Petitioner acknowledged that she is no longer disputing her MA hearing issue.

Based on the foregoing information and evidence, Petitioner's MA issue is now moot because of the Department's subsequent action of certifying the MA benefits. This resulted in the Petitioner and her two children having no lapse of MA coverage. See Exhibit C, pp. 1-3. As such, Petitioner's MA hearing request is **DISMISSED**. See BAM 600 (April 2015 and October 2015), pp. 1-6.

Second, subsequent to the hearing, the Department was going to fax the undersigned the Notice of Case Action addressing Petitioner's FAP benefits as Exhibit C for the record. However, the undersigned never received the Notice of Case Action dated [REDACTED]. As such, Exhibit C did not include the Notice of Case Action as part of the evidence record. Nevertheless, the undersigned still has the jurisdiction to address Petitioner's FAP benefits because her hearing request and Notice of Case Action are both dated [REDACTED]. See BAM 600, pp. 1-6.

Cash Assistance application

For FIP only, dependent children are expected to attend school full-time, and graduate from high school or a high school equivalency program, in order to enhance their potential to obtain future employment leading to self-sufficiency. BEM 245 (July 2015), p. 1. Dependent children ages 6 through 17 must attend school full-time. BEM 245, p. 1.

A dependent child age 6 through 15 must attend school full-time. BEM 245, p. 1. If a dependent child age 6 through 15 is not attending school full-time, the entire FIP group is not eligible to receive FIP. BEM 245, p. 1. A dependent child age 16 or 17 who is not attending high school full-time is disqualified from the FIP group in Bridges. BEM 245, p. 1.

Dependent children ages 6 through 18 must meet one of the conditions described below:

- A child age 6 through 17 must be a full-time student.
- A child age 18 must attend high school full-time until either the child graduates from high school or turns 19, whichever occurs first.

BEM 245, p. 2. A dependent child must be enrolled in and attending a school as defined in BEM 245. BEM 245, p. 2.

The school determines:

- The level of enrollment (such as full-time, half-time, or part-time).
- Attendance compliance.
- Suspensions (such as reasons for/duration).

BEM 245, pp. 5-6.

The Department verifies school enrollment and attendance at application and redetermination beginning with age 7. BEM 245, p. 8. The Department verifies school enrollment and attendance at application, redetermination and at each birthday beginning with age 16. BEM 245, p. 8. Verification sources for school enrollment and attendance includes a DHS-3380, Verification of Student Information. BEM 245, p. 9.

In this case, it was not disputed that the Department timely received verification of Child A's student verification on [REDACTED]. See Exhibit B, pp. 8-9. However, the Department argued that it received verification of Child B's verification on [REDACTED], which is after the due date. See Exhibit B, pp. 10-11. Thus, the Department denied Petitioner's FIP application. See Exhibit B, pp. 16-18. It should be noted that Child B is the older child and appears to be 16-years-old ([REDACTED]). Thus, policy states that the Department should have disqualified Child B from the FIP group because the child was between the ages of 16 to 17, rather than deny the application in its entirety. See BEM 245, p. 1.

Nonetheless, Petitioner argued that she timely submitted verification of Child B's student information on [REDACTED]. Petitioner testified that she went to Child B's school on [REDACTED] and witnessed them fax Child B's verification to the Department on [REDACTED], which is the same date that Petitioner signed the verification form. See Exhibit B, p. 10.

The Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. BAM 130 (July 2015), p. 6.

Verifications are considered to be timely if received by the date they are due. BAM 130, p. 6. For electronically transmitted verifications (fax, email or Mi Bridges document upload), the date of the transmission is the receipt date. BAM 130, p. 6. Verifications that are submitted after the close of regular business hours through the drop box or by delivery of a MDHHS representative are considered to be received the next business day. BAM 130, p. 6.

The Department sends a negative action notice when: the client indicates refusal to provide a verification, or the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130, p. 7.

Based on the foregoing information and evidence, the Department improperly denied Petitioner's FIP application effective [REDACTED]. The evidence establishes that Child A and B are compliant with school attendance requirements. See Exhibit B, pp. 8-11 (Verification from school indicating that Child A and B are enrolled full time and that Child A and B are in the process of enrolling – at the time verifications were submitted school had not started (summer recess)).

First, the undersigned finds that Petitioner credibly testified that Child B's school verification was submitted before the due date on [REDACTED]. Petitioner's

credibility is supported by the fact that she signed the Verification of Student Information (DHS-3380) on [REDACTED], which is the same day she testified as to when the school faxed over the document. See Exhibit B, p. 10.

Second, the undersigned finds that Petitioner made a reasonable attempt to submit the verifications before the time period given has elapsed. Petitioner submitted Child A's student verification on [REDACTED], which was submitted before the time period had elapsed. See Exhibit B, pp. 8-9 and BAM 130, p. 7.

Third, Petitioner also submitted a Medical Needs – PATH form (DHS-54-E) seeking possible deferral request to take care of Child B's medical conditions. See Exhibit B, pp. 19-20. However, Petitioner's FIP denial was based on failure to provide verification of Child B's school enrollment and attendance status. The undersigned finds that the Department improperly denied Petitioner's FIP application in accordance with Department policy. See BAM 130, pp. 6-7 and BEM 245, pp. 1-11. Thus, the Department is ordered to re-register and reprocess Petitioner's FIP application dated [REDACTED]. At the time the Department will reprocess Petitioner's application, it can redetermine any deferral requests. See BEM 229 (July 2013), pp. 1-2 (Temporarily defer an applicant who has identified barriers that require further assessment or verification before a decision about a lengthier deferral is made, such as clients with serious medical problems or disabilities or clients caring for a spouse or child with disabilities. Clients should not be referred to orientation and the PATH application eligibility period (AEP) until it is certain that barriers to participation such as lack of child care or transportation have been removed, possible reasons for deferral have been assessed and considered, and disabilities have been accommodated).

FAP benefits

First, the Department properly denied FAP benefits for Petitioner for the period of [REDACTED]. A person cannot be a member of more than one FAP Certified Group (CG) in any month. BEM 222 (July 2013), p. 3. Petitioner and the two children were members of the spouse's FAP group for the month of August 2015, thus, they were ineligible for FAP benefits for only that month. See Exhibit D, pp. 3-4 and BEM 222, p. 3.

Second, Petitioner argued that the Department improperly determined the FAP group composition effective [REDACTED], ongoing. Petitioner testified that the group composition should have been three, rather than two. In response, the Department testified that Petitioner was found not eligible for FAP benefits based on not being student status eligible.

A person enrolled in a post-secondary education program may be in student status, as defined in BEM 245. BEM 245, p. 1. A person in student status must meet certain criteria in order to be eligible for assistance. BEM 245, p. 1.

A person is in student status if she is:

- Age 18 through 49 and
- Enrolled half-time or more in a:
 - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.
 - Regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required.

BEM 245, p. 3.

Additionally, in order for a person in student status to be eligible, they must meet one of the following criteria listed in BEM 245 (i.e., receiving FIP). See BEM 245, pp. 4-5.

At the hearing, Petitioner argued that she only attended school for one week. Petitioner testified that she did not continue to attend school due to personal issues.

In response, the Department indicated that Petitioner reported in her application that she was a full time student. Based on the information reported in the application, the Department concluded Petitioner was not eligible for FAP benefits because she did not meet one of the requirements listed in BEM 245 in order to be student status eligible. See BEM 245, pp. 4-5 (In order for a person in student status to be eligible, they must meet one of the following criteria: receiving FIP, physically or mentally unfit for employment, etc...).

For FAP only, the Department verifies school enrollment for persons age 18-49 attending a post-secondary education program. BEM 245, p. 9. This must be verified at application, redetermination and reported change. BEM 245, p. 9.

The Department verifies post-secondary school enrollment as follows:

- DHS-3380, Verification of Student Information.
- Telephone contact with the school.
- Other acceptable documentation that is on official business letterhead.

BEM 245, p. 9.

The Department tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. The Department uses the DHS-3503, Verification Checklist (VCL), to request verification. BAM 130, p. 3.

The Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. BAM 130, p. 6. The Department send a negative action notice when: the client indicates refusal to provide a verification,

or the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130, p. 7.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it properly processed Petitioner's FAP application dated [REDACTED], in accordance with Department policy. As stated previously, the Department argues that Petitioner failed to meet student status eligibility. However, policy clearly states that the Department verifies school enrollment for persons age 18-49 attending a post-secondary education program. BEM 245, p. 9. This must be verified at application, redetermination and reported change. BEM 245, p. 9. The evidence record fails to indicate any action taken by the Department requesting verification of Petitioner's school enrollment (i.e., sending Petitioner a DHS-3380, Verification of Student Information). The evidence only indicates that the Department found Petitioner not eligible for benefits when it sent her a Notice of Case Action on [REDACTED]. However, prior to sending Petitioner an eligibility determination, the Department must first verify Petitioner's school enrollment at application according to Department policy. See BEM 245, p. 9. Because the Department failed to follow Department policy in verifying Petitioner's post-secondary school enrollment status, the Department improperly processed Petitioner's FAP application dated [REDACTED]. See BAM 130, pp. 3 and 7 and BEM 245, p. 9. The Department will reprocess Petitioner's FAP application and redetermine her FAP eligibility effective [REDACTED], ongoing.

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 (i) the Department did not act in accordance with Department policy when it improperly denied Petitioner's FIP application effective September 16, 2015; (ii) the Department acted in accordance with Department policy when it denied Petitioner's FAP benefits for [REDACTED]; and (iii) the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it processed her FAP application dated [REDACTED].

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to FAP benefits for August 2015 and **REVERSED IN PART** with respect to FIP application dated [REDACTED] and FAP application dated [REDACTED].

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. Initiate re-registration and reprocessing of Petitioner's Cash Assistance (FIP) application dated [REDACTED] and FAP application dated [REDACTED];

2. Redetermine Petitioner's FAP eligibility effective [REDACTED], ongoing;
3. Issue supplements to Petitioner for any FIP and FAP benefits she was eligible to receive; and
4. Notify Petitioner of its decision.

IT IS ALSO ORDERED that Petitioner's **MA** hearing request (dated September 9, 2015) is **DISMISSED**.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **11/10/2015**

Date Mailed: **11/10/2015**

EF / hw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

