

**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.: 15-023207
Issue No.: 2000; 3001; 3008
Agency Case No.: [REDACTED]
Hearing Date: January 28, 2016
County: MACOMB-DISTRICT 36

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 January 28, 2016, from Detroit, Michigan. The Petitioner was represented by Petitioner, [REDACTED] and her spouse, Nader Nissan. The Department was represented by [REDACTED] Hearings Facilitator. [REDACTED] served as translator during the hearing.

ISSUES

Did the Department properly determine Petitioner's Food Assistance Program (FAP) group composition?

Did the Department properly calculate Petitioner's FAP allotment effective [REDACTED] [REDACTED]?

Did the Department properly close Petitioner's FAP benefits effective [REDACTED] 2015?

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 is an ongoing recipient of FAP benefits. See Exhibit B, pp. 1-2.
2. Prior to July 2015, Petitioner's FAP group composition was two (Petitioner and her spouse). See Exhibit B, p. 2.

3. On [REDACTED], Petitioner gave birth to her child and her household composition increased to three (Petitioner, her spouse, and child).
4. Effective [REDACTED], Petitioner's FAP group composition increased to three. See Exhibit B, p. 2.
5. For October 2015, Petitioner received a FAP allotment of \$127. See Exhibit B, p. 2.
6. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that she would receive a FAP supplement of \$341 worth of benefits for the period of [REDACTED]. See Exhibit A, pp. 11-12. However, the Notice of Case Action failed to address any FAP case closure effective [REDACTED].
7. Effective [REDACTED] Petitioner's FAP benefits closed. See Exhibit B, p. 2.
8. On [REDACTED] Petitioner filed a hearing request, protesting her FAP benefits and Medical Assistance (MA) benefits.

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.

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.

FAP group composition

First, Petitioner argued that the Department failed to properly determine Petitioner's FAP group composition. Prior to July 2015, Petitioner's FAP group composition was two (Petitioner and her spouse). See Exhibit B, p. 2. On [REDACTED], Petitioner gave birth to her child and her household composition increased to three (Petitioner, her spouse, and child). Effective [REDACTED], Petitioner's FAP group composition increased to three. See Exhibit B, p. 2. Based on Petitioner and her spouse's testimony, it appeared they argued the group composition should have increased to three effective June of 2015. Petitioner's argument would be a failure to process her group composition. See BAM 600 (April 2015 and October 2015), pp. 1-6.

A member add that increases benefits is effective the month after it is reported or, if the new member left another group, the month after the member delete. BEM 212 (July 2014), p. 9. In determining the potential FAP benefit increase, the Department assumes the FIP/SDA supplement and new grant amount have been authorized. BEM 212, p. 9.

When a member leaves a group to apply on his own or to join another group, a member delete should be completed in the month the local office learns of the application/member add. BEM 212, p. 9. Initiate recoupment if necessary. If the member delete decreases benefits, adequate notice is allowed. BEM 212, p. 9.

Based on the foregoing information and evidence, the Department properly determined that Petitioner's FAP group composition was three effective [REDACTED] ongoing, in accordance with Department policy. See BEM 212, p. 9. Petitioner's child was born in June 2015 and policy states that the member add occurs the month after it is reported. See BEM 212, p. 9. Thus, July 2015 would be the month in which the child is added to Petitioner's FAP group composition, which the Department properly processed in accordance with Department policy.

FAP closure

Second, Petitioner disputed the closure of her FAP benefits effective [REDACTED], which the Department argued was based on excess income. On [REDACTED] the Department sent Petitioner a Notice of Case Action notifying her that she would receive a FAP supplement of \$341 worth of benefits for the period of [REDACTED] to [REDACTED]. See Exhibit A, pp. 11-12. However, the Notice of Case Action failed to address any FAP case closure effective [REDACTED].

A positive action is a Michigan Department of Health & Human Services (MDHHS) action to approve an application or increase a benefit. BAM 220 (October 2015), p. 1. A negative action is a MDHHS action to deny an application or to reduce, suspend or terminate a benefit. BAM 220, p. 1.

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. BAM 220, p. 2. The notice of case action is printed and mailed centrally from the consolidated print center. BAM 220, p. 2. A notice of case action must specify the following:

- The action(s) being taken by the department.
- The reason(s) for the action.
- The specific manual item which cites the legal base for an action or the regulation or law itself.
- An explanation of the right to request a hearing.
- The conditions under which benefits are continued if a hearing is requested.

BAM 220, p. 2.

Moreover, there are two types of written notice: adequate and timely. BAM 220, p. 2. An adequate notice is a written notice sent to the client at the same time an action takes effect (not pended). BAM 220, p. 2. Timely notice is given for a negative action unless policy specifies adequate notice or no notice. BAM 220, p. 2. A timely notice is mailed at least 11 days before the intended negative action takes effect. BAM 220, p. 2. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p. 2.

Based on the foregoing information and evidence, the Department did not act in accordance with Department policy when it failed to send Petitioner timely written notice of her case closure. Policy states that Petitioner must receive notice that the Department would be closing her FAP benefits effective [REDACTED], due to excess income. The Notice of Case Action dated [REDACTED], failed to provide any such notice, and was in fact, a notice regarding a supplement of benefits. Because the Department failed to provide Petitioner notice of her case closure, the Department improperly closed her FAP benefits effective [REDACTED], in accordance with Department policy. See BAM 220, pp. 1-4. As such, the Department will redetermine Petitioner's FAP eligibility effective [REDACTED], in accordance with Department policy. It should be noted that the Department provided evidence that appears to indicate that Petitioner is not eligible for benefits effective November 2015 due to excess income. Nonetheless, the Department is still ordered to redetermine eligibility effective [REDACTED].

FAP allotment

Third, Petitioner also disputed the amount of her FAP allotment effective May 2015 and [REDACTED], ongoing. Petitioner did not dispute her FAP allotment received for June 2015 as she received a large supplement for this benefit month. See Exhibit B, p. 2.

Policy allows the Petitioner anytime to dispute the amount of her FAP allotment. See BAM 600, pp. 4-5 (the Michigan Administrative Hearing System may grant a hearing for

FAP only when it involves the current level of benefits or denial of expedited service). However, the undersigned is also restricted as to how far back the undersigned can review the amount of her FAP allotment. See BAM 600, pp. 1-6. Because Petitioner's hearing request was received in December 2015, the undersigned will only go back ninety days to review whether the Department properly calculated her FAP allotment. Thus, the undersigned will only review Petitioner's FAP allotment effective October 2015.

The local office and client or Authorized Hearing Representative (AHR) will each present their position to the Administrative Law Judge (ALJ), who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (October 2015), p. 35. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, pp. 37-38.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it properly calculated Petitioner's FAP allotment for October 2015. See BAM 600, pp. 35-38. The Department failed to present the undersigned a FAP budget for the benefit month of October 2015, which was necessary to determine whether the Department properly calculated the FAP allotment. Because the Department failed to satisfy its burden of showing that it properly calculated Petitioner's FAP allotment, the Department is ordered to recalculate her FAP benefits effective October 1, 2015, in accordance with Department policy.

MA benefits

Next, Petitioner also disputed her, her spouse's, and their child's MA benefits effective June of 2015. However, the undersigned lacks the jurisdiction to address Petitioner's MA dispute. A review of the hearing request finds that Petitioner disputed case closures, failure to process three FAP/MA applications she filed, and pending medical bills that she had due to the birth of a child. See Exhibit A, p. 2. However, Petitioner's hearing request is dated in December 2015, but she is disputing issues dating back to June 2015 (more than 6 months ago). Petitioner's time period had elapsed in which she could request a timely hearing. As such, the undersigned lacks the jurisdiction to address Petitioner's dispute with her MA benefits. See BAM 600, p. 6. (The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days).

In regard to the Petitioner, the Department submitted a help desk ticket to resolve their MA issue on [REDACTED]. See Exhibit A, p. 16. The Department testified that they were receiving Emergency Services Only (ESO) coverage in error and the ticket was submitted to correct this error. This would possibly explain why Petitioner was not able to have her medical bills processed, as the services were not covered by ESO coverage. Nevertheless, the undersigned lacks the jurisdiction to address Petitioner's dispute with the type of coverage she received. It was discovered that Petitioner and

her husband had separate hearings scheduled on the same day to address their ESO coverage. Petitioner and her husband requested hearings disputing their ESO coverage (See Reg. Nos. 15-019104 and 15-017560). As such, the undersigned will not further discuss the type of coverage they received as they had a separate hearing scheduled for that matter. On another note, the Department presented Petitioner's Medicaid Eligibility, which showed that she received full coverage from June 2015 to July 2015, which would have covered the birth of their child. See Exhibit B, p. 7. As such, Petitioner can attempt to resubmit those medical bills.

In regards to the child, the Department testified that it had yet to certify the child's MA benefits. However, the Department presented the child's Medicaid Eligibility that showed that the child received ESO coverage for June 2015 and full coverage from July 2015, ongoing. See Exhibit B, p. 10. Thus, other than the month of June 2015, the child is receiving full MA coverage. As stated above, the undersigned lacks the jurisdiction to address the ESO coverage for June 2015 as the hearing request is dated in December 2015. Moreover, there has been no negative action that occurred for the child as the child is receiving full MA coverage effective July 1, 2015, ongoing. See Exhibit B, p. 10. As such, the undersigned lacks the jurisdiction to address the child's MA issue for the above stated reasons.

In regard to the Petitioner's spouse, his Medicaid Eligibility indicated he is not receiving full coverage, but that he is eligible for Group 2 coverage effective [REDACTED] ongoing. See Exhibit B, p. 5. The Petitioner/spouse indicated that he does not have MA coverage, whereas the Department indicated he is receiving ESO coverage. Moreover, the Department testified that his MA benefits have not been closed, but that they will all have full MA coverage once the ticket has been resolved. As stated above, the husband has a separate hearing scheduled to address the ESO coverage. Furthermore, again, the undersigned lacks the jurisdiction to address the spouse's MA benefits as the hearing request is dated in December 2015, but they are disputing coverage dating back to June 2015. See BAM 600, pp. 1-6.

For the above stated reasons, the undersigned lacks the jurisdiction to address Petitioner's MA dispute and the MA hearing request is DISMISSED.

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 acted in accordance with Department policy when it properly determined that Petitioner's FAP group composition was three, effective [REDACTED]; (ii) the Department did not act in accordance with Department policy when it closed Petitioner's FAP benefits effective [REDACTED]; (iii) the Department failed to satisfy its burden of showing that it properly calculated Petitioner's FAP allotment effective [REDACTED] and (iv) the undersigned lacks the jurisdiction to address Petitioner's dispute with the MA benefits.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to FAP group composition and **REVERSED IN PART** with respect to FAP benefits effective [REDACTED] ongoing.

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 effective [REDACTED];
2. Recalculate the FAP budget for [REDACTED], ongoing;
3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED], ongoing; and
4. Notify Petitioner of its decision.

IT IS ALSO ORDERED that Petitioner's **MA** hearing request is **DISMISSED**.



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

Date Signed: **1/29/2016**

Date Mailed: **1/29/2016**

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:

