

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

IN THE MATTER OF:

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MAHS Reg. No.: 15-023585
Issue No.: 2007; 3003
Agency Case No.: ██████████
Hearing Date: February 04, 2016
County: Wayne-District 18
(Taylor)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 February 4, 2016, from Detroit, Michigan. Petitioner appeared and represented herself. ██████████, Petitioner's friend, appeared as a witness on Petitioner's behalf. The Department was represented by ██████████, Eligibility Specialist/Hearing Facilitator.

ISSUE

Did the Department properly provide Petitioner's children with the Medicaid (MA) coverage they were eligible to receive?

Did the Department properly add Petitioner's children to her Food Assistance Program (FAP) case?

Did the Department properly close Petitioner's FAP case effective December 1, 2015 for failure to return a completed redetermination?

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 was an ongoing recipient of FAP and MA benefits for herself and her two minor children, ██████████ and ██████████
2. Petitioner's two minor children were placed in the court's temporary custody.

3. On March 31, 2015, Petitioner notified the Department that [REDACTED] was returned to her care in a March 24, 2015 court order (Exhibits F and G).
4. On April 13, 2015, Petitioner notified the Department that [REDACTED] was back in her care more than 50% of the time as of April 3, 2015 (Exhibits H and I).
5. [REDACTED] was added back to Petitioner's FAP case effective April 1, 2015 and [REDACTED] was added back to her FAP case effective September 1, 2015 (Exhibits K and L).
6. On October 13, 2015, the Department sent Petitioner a redetermination concerning her FAP case to a [REDACTED] address (Exhibits B and C).
7. On November 4, 2015, the Department sent Petitioner a Notice of Missed Interview at her [REDACTED] address notifying her that her FAP benefits would close if she did not reschedule her FAP interview before November 30, 2015 (Exhibit D).
8. On November 4, 2015, Petitioner and her worker talked about the redetermination.
9. Petitioner did not return a completed redetermination to the Department.
10. Petitioner's FAP case closed effective November 30, 2015 due to her failure to submit a completed redetermination.
11. As of the hearing date, Petitioner and her children had active MA cases; the children's coverage was for children in foster care.
12. On December 7, 2015, the Department received Petitioner's request for hearing disputing the Department's actions concerning her MA and FAP cases.

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).

Petitioner requested a hearing concerning the closure of her FAP case and her children's MA coverage. In her hearing request, Petitioner also requested a review of her FAP case since March 2015.

Children's MA Cases

At the hearing, the Department established that Petitioner was an active MA recipient for SSI recipients and that the children were active MA recipients under the FCDW program (Exhibit A). Petitioner was satisfied with her own MA coverage but explained

that, because the children received foster care-related MA, she was unable to access MA benefits on their behalf. An individual is eligible for the most beneficial category, which is the one that results in eligibility or the least amount of excess income. BEM 105 (October 2014), p. 2.

The FCDW is the Foster Care Department Ward Medicaid program that provides MA coverage to children in foster care who are not placed with the parent. Foster Care Manual (FOM) 803, p. 1. The MA program for children in foster care is opened in Services Worker Support System – Foster Care, Adoption and Juvenile Justice (SWSS-FAJ). FOM 803, p. 1. When a child is returning to his own home, the parent should complete the DHS-1171, application for assistance, prior to the child's return so that the local Department office can determine the child's eligibility for other MA coverage without any lapse in medical coverage for the child. FOM 803, pp. 5-6. If the parent is unable to complete and return the form, the foster care worker must facilitate this process by completing the essential known information on the DHS-1171, returning it to the local Department office for the date stamp and assignment process. BOM 803, pp. 5-6.

In this case, the evidence established that, in a court order dated May 22, 2015, the court terminated its jurisdiction over the children, removed the children from its temporary custody, and placed them back with Petitioner (Exhibit J). Clearly, under these circumstances, the children were no longer eligible for FTDW MA coverage. The Department was advised of this change in a July 13, 2015 email from the foster care case manager (Exhibit J). Although the Department explained that it could not act to change the children's MA coverage until the foster care worker changed the children's status in its system, Petitioner established that she had requested assistance in getting the children off the FCDW program but none was provided. Because the Department was aware as of July 13, 2015 that both children were back in Petitioner's care and that the court had terminated its jurisdiction over the children, the Department should have facilitated the process of converting the children's MA cases to the appropriate type of coverage by advising Petitioner that she needed to file an application or filing an application on her behalf. By failing to assist Petitioner in filing an application and then promptly processing the application to determine the best available program for the children, the Department failed to act in accordance with policy.

FAP Case

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.

A review of Petitioner's hearing request and the evidence at the hearing established two issues raised by Petitioner: (1) the Department's failure to process her member add to

place ██████ back in her FAP group and (2) the closure of her FAP case effective December 1, 2015.

Addition of Child to FAP Case

When a child spends time with multiple caretakers who do not live together, the Department must determine who the primary caretaker and include the child in the FAP group of the primary caretaker. BEM 212 (October 2015), p. 3. The primary caretaker is the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. BEM 212, p. 2.

In this case, ██████ and ██████ had been taken into the court's temporary custody and placed in foster care. ██████ was placed back in Petitioner's home and care pursuant to a March 24, 2015 court order, and Petitioner notified the Department of this change on March 31, 2015 (Exhibits F and G). ██████ was properly added back to Petitioner's FAP group effective April 1, 2015 (Exhibit K). See BEM 212, p. 9.

On April 13, 2015, Petitioner submitted a change report advising the Department that ██████ had been placed back into her home over 50% of the time (Exhibit H). She included a March 24, 2015 court order showing that the Department was ordered to begin unsupervised visits between ██████ and Petitioner, including overnight visits (Exhibit I). The Department did not add ██████ to Petitioner's FAP group until September 1, 2015 (Exhibits K and L).

While the Department is required to accept the client's statement regarding the number of days per month (on average) a child sleeps in their home for purposes of determining primary caretaker, it must verify this information if questionable or disputed. BEM 212, pp. 4, 10. Because the child was in the court's temporary custody, it follows that the Department would need to verify the child's status before adding him back to Petitioner's case. The worker's June 16, 2015 case notes show that the foster care case was not listing Petitioner as the primary caregiver (Exhibits E). On July 13, 2015, the Department received an email from the foster care case manager for ██████ and ██████ that included a May 22, 2015 court order terminating the court's jurisdiction over both ██████ and ██████ and placing ██████ back in Petitioner's home and care (Exhibit J). The Department's receipt of verification on July 13, 2015 would require that ██████ be added to Petitioner's FAP case effective August 1, 2015. See BEM 212, p. 9. Therefore, the Department did not act in accordance with Department policy when it failed to add ██████ to Petitioner FAP group for August 2015.

FAP Case Closure

The Department testified that Petitioner's FAP case closed effective December 1, 2015 because she had failed to submit a completed redetermination. Redeterminations must be completed at least every 12 months in order for the Department to determine the client's continued eligibility for benefits. BAM 210 (October 2015), p. 1. However, FAP cases with unstable circumstances are assigned a three-month benefit period. BAM

201, p. 2. FAP benefits stop at the end of a benefit period unless a redetermination is completed and a new benefit period is certified. BAM 210, p. 2. If a FAP redetermination packet is not logged in by the last working day of the redetermination month, the Department automatically closes the client's FAP case. BAM 210, p. 11.

In this case, the Department testified that, because of Petitioner's unstable circumstances, namely the children's changing placement, Petitioner had three-month redetermination cycles. A redetermination was sent to Petitioner on October 13, 2015 for completion and return by November 4, 2015 (Exhibit C). No redetermination was received, and on November 4, 2015, the Department sent Petitioner a Notice of Missed Interview advising her that her case would close effective November 30, 2015 if she did not reschedule her interview (Exhibit D).

Petitioner and her worker spoke on November 4, 2015. According to Petitioner, her worker advised her that he would see if a redetermination was required for November 2015 in light of the August 2015 redetermination and that he would send her a redetermination form if one was required. The worker's case notes are consistent with, and collaborate, Petitioner's testimony that they had a discussion where the worker agreed to see if the November 2015 redetermination was required (Exhibit E). Petitioner also presented a letter the Department received on October 23, 2014, where she advised the Department that she had moved back to the [REDACTED] address and that she was having problems finding her papers. The fact that Petitioner had advised the Department that she did not have paperwork from the Department lends further support to Petitioner's understanding from the November 4, 2015 conversation that she would receive another copy of the redetermination if she was expected to fill and submit one.

The Department is required to explain client responsibilities in understandable terms. BAM 105 (July 2015), p. 13. Because the Department did not send another redetermination form to Petitioner, Petitioner was led to believe that she would not be required to send one in. Under the circumstances in this case, the Department did not explain to Petitioner her responsibilities with respect to completion of the redetermination. Therefore, the Department did not act in accordance with Department policy when it closed her case due to failure to complete the redetermination.

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 did not act in accordance with Department policy when it failed (i) to assist Petitioner in applying for MA for the children to change their coverage; (ii) to add [REDACTED] to Petitioner's FAP case effective August 1, 2015; and (iii) to close Petitioner's FAP case effective December 1, 2015 due to failure to submit a completed redetermination.

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. Add Petitioner's son [REDACTED] to her FAP case effective August 1, 2015;
2. Supplement Petitioner for FAP benefits she was eligible to receive in August 2015 but did not based on a FAP group size of three;
3. If Petitioner timely submits a redetermination sent to her in accordance with policy, reinstate her FAP case effective December 1, 2015 and process the redetermination;
4. Issue supplements to Petitioner for FAP benefits she was eligible to receive but did not from December 1, 2015 ongoing;
5. Determine the children's MA eligibility for July 1, 2015 and provide them with MA coverage they are eligible to receive from July 1, 2015 ongoing; and
6. Notify Petitioner in writing of its decisions.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **2/12/2016**

Date Mailed: **2/12/2016**

ACE / tlf

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

