



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 29, 2016
MAHS Docket No.: 16-001836
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 March 17, 2016, from Lansing, Michigan. Petitioner was represented by himself and his father [REDACTED]. The Department was represented by Assistance Payments Supervisor [REDACTED].

ISSUE

Did the Department properly determine Petitioner's Medical Assistance (MA) eligibility on January 22, 2016?

Did the Department properly determine Petitioner's Food Assistance Program (FAP) eligibility on January 22, 2016?

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 Food Assistance Program (FAP) and Medical Assistance (MA) benefits.
2. On July 14, 2015, Petitioner was sent a Redetermination (DHS-1010) for his Food Assistance Program (FAP).
3. On August 10, 2015, Petitioner returned the Redetermination (DHS-1010).

4. On January 22, 2016, Petitioner was sent a Notice of Case Action (DHS-1605) which stated his monthly Food Assistance Program (FAP) allotment was approved for \$ [REDACTED] per month from September 1, 2015 to August 31, 2017.
5. On January 22, 2016, Petitioner was sent a Health Care Coverage Determination Notice (DHS-1606) which stated he was: not eligible for MA from July 1, 2015 to July 31, 2015 due to excess income and failure to cooperate with child support requirements; not eligible for MA from August 1, 2015 ongoing because he was not under 21, pregnant, a caretaker of a minor child, over 65, blind or disabled; eligible for MA as a \$ [REDACTED] deductible from March 1, 2016 ongoing; and eligible for full coverage Medicare Savings Program from March 1, 2016 ongoing.
6. On February 6, 2016, Petitioner submitted a hearing request.

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.

Bridges Administration Manual (BAM) 220 Case Actions provides the requirements of notice to applicants and recipients. Negative actions are defined at pages 10 & 11:

Negative Actions

A **negative action** is identified in Bridges with notice reason(s) in eligibility results. Negative actions include:

Decrease in program benefits, including case or EDG closure.

Special living arrangement client pay increase.

Inactivation of an eligible group member.

CDC family contribution increases.

Change in payment method to restricted payment (no code needed). Termination of a member's medical eligibility (member remains active but **not** medically eligible).

Medical coverage cancellation or reduction.

Inactivation resulting in a FAP benefit increase is **not** a FAP negative action.

Patient-pay amount initiated (**unless** this occurs on the day of case opening).

Post-eligibility patient-pay amount increase.

Changing the Level of Care (LC) code from 02 or 08 to LC code 56 (divestment penalty); see BEM 405, MA Divestment.

Changing CDC eligibility from categorical to income eligible.

FAP Only

Reducing a FAP group's benefits at redetermination is treated as a **positive action** because the change affects the new certification, **not** the current benefit period.

The requirements for notices of case actions, at pages 2-4:

NOTICE OF CASE ACTIONS

All Programs

Upon certification of eligibility results, Bridges 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.

For **FAP Only**, see Actions Not Requiring Notice in this item.

Exception: Written notice is **not** required to implement a hearing decision or policy hearing authority decision.

Refer to policy in BAM 600, Hearings, if a client disputes a case action.

There are two types of written notice: **adequate** and **timely**.

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.

Adequate Notice

An adequate notice is a written notice sent to the client at the same time an action takes effect (not pending). Adequate notice is given in the following circumstances:

All Programs

Approval/denial of an application.
Increase in benefits.

MA Only

Case opening with a deductible or patient-pay amount.
Decrease in post-eligibility patient-pay amount.
Recipient removed due to his eligible status in another case.
Divestment penalty when level of care (LC) code is blank or 20.
Addition of MA coverage on a deductible case.
Increase in medical benefits.

FAP Only

Negative action results from information on the DL-060, Child Support Information Report.

The change was reported in writing and signed by an eligible group member **and** the new benefit level or ineligibility can be determined based **solely** on the written information.

Note: When deleting a member, an application the client files on their own, **or** the updated application of a group they join, is considered a change reported in writing by an eligible member of the former group.

Reliable information indicates the group will leave the state before the next issuance.

Changes reported on a DHS-1046, Semi-Annual Contact Report.

Timely Notice

All Programs

Timely notice is given for a **negative action** unless policy specifies adequate notice or no notice. See Adequate Notice and, for CDC and FAP only, Actions Not Requiring Notice, in this item. A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pending to provide the client a chance to react to the proposed action.

Both the notices in this case indicate retroactive application of a negative action. This is not allowed in Department policy. There are circumstances when the Department may determine that an over-issuance of benefits occurred in the past. The notice requirements and hearing rights associated with an alleged over-issuance are different from a negative notice of case action affecting future benefits.

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 determined Petitioner's Medical Assistance (MA) and Food Assistance Program (FAP) eligibility on January 22, 2016.

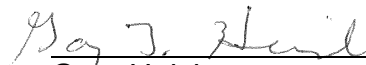
DECISION AND ORDER

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. Re-determine Petitioner's Medical Assistance (MA) and Food Assistance Program (FAP) eligibility.
2. Issue Petitioner proper notice of the eligibility determinations in accordance with Department policy.

GH/nr



Gary Heisler
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

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

DHHS

[REDACTED]

Petitioner

[REDACTED]