



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 15, 2016
MAHS Docket No.: 16-005312
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. 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 June 8, 2016, from Detroit, Michigan. The Petitioner was represented by [REDACTED]. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits effective May 1, 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 FAP benefits.
2. Petitioner is an ongoing recipient of Medical Assistance (MA) and Medicare Savings Program (MSP) benefits.
3. On [REDACTED], the Department sent Petitioner a Mid-Certification Contact Notice (DHS-2240-A) (mid-certification), which informed Petitioner of his upcoming mid-certification review, and it was due back by [REDACTED]. See Exhibit B, pp. 1-3.

4. On [REDACTED], the Department received Petitioner's MA and MSP redetermination. See Exhibit A, p. 1.
5. On [REDACTED], the Department processed the redetermination, which resulted in the Department issuing a Verification Checklist (VCL) to determine Petitioner's ongoing eligibility for the MA, FAP, and MSP benefits and requested verification of vehicle value/ownership, shelter expenses, and bank accounts. See Exhibit A, pp. 9-10. The verifications were due back by [REDACTED]. See Exhibit A, pp. 9-10.
6. Petitioner failed to submit the verifications by the due date of [REDACTED]. See Exhibit B, 4.
7. Petitioner failed to submit the mid-certification by the due date of [REDACTED]. See Exhibit A, p. 8 and Exhibit B, p. 4.
8. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits would close effective [REDACTED], ongoing, due to his failure to comply with the verification requirements. See Exhibit A, pp. 11-12.
9. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying him that his MA/MSP benefits would close effective [REDACTED], ongoing, due to his failure to comply with the verification requirements. See Exhibit A, pp. 13-15.
10. On [REDACTED], Petitioner provided the requested verifications. See Exhibit A, pp. 1 and 8 and Exhibit B, p. 4.
11. In April 2016, the Department did not issue Petitioner a DHS-2240B, Potential Food Assistance (FAP) Closure, as a result of not receiving Petitioner's mid-certification.
12. On [REDACTED], Petitioner filed a hearing request, protesting his MA and FAP benefits closure/potential closure. See Exhibit A, pp. 2-3.
13. The Department did not receive the mid-certification by the end of April 2016.
14. On [REDACTED], the Michigan Administrative Hearing System (MAHS) sent Petitioner a Notice of Hearing notifying him of a hearing scheduled on May 19, 2016.
15. On or around [REDACTED], Petitioner requested an adjournment.
16. On [REDACTED], the Administrative Law Judge (ALJ) issued an Adjournment Order.
17. On [REDACTED], MAHS sent Petitioner a Notice of Hearing notifying him of a hearing rescheduled for [REDACTED].

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.

Preliminary matter

As a preliminary matter, Petitioner filed a hearing request in which he is disputed the closure of his MA/MSP and FAP benefits effective [REDACTED]. See Exhibit A, pp. 2-3. The undersigned addresses the MA/MSP and FAP benefits separately below:

MA and MSP benefits

In the present case, the Department received Petitioner's MA/MSP redetermination on [REDACTED]. See Exhibit A, p. 1 and Exhibit B, p. 4. On [REDACTED], the Department processed the redetermination, which resulted in the Department issuing a VCL to determine Petitioner's ongoing eligibility for the MA, FAP, and MSP benefits and requested verification of vehicle value/ownership, shelter expenses, and bank accounts. See Exhibit A, pp. 9-10. The verifications were due back by [REDACTED]. See Exhibit A, pp. 9-10. Petitioner failed to submit the verifications by the due date of [REDACTED]. See Exhibit A, p. 8 and Exhibit B, p. 4. As a result, on [REDACTED], the Department sent Petitioner a determination notice notifying him that his MA/MSP benefits would close effective [REDACTED], ongoing, due to his failure to comply with the verification requirements. See Exhibit A, pp. 13-15. On [REDACTED], Petitioner provided the requested verifications. See Exhibit A, pp. 1 and 8 and Exhibit B, p. 4. On

██████████, Petitioner filed a hearing request, protesting the Department's action. See Exhibit A, p. 3.

During the hearing, it was discovered that the Department subsequently reinstated Petitioner's MA and MSP benefits because he submitted the verifications before the negative action effective date.

A negative action is an MDHHS action to deny an application or to reduce, suspend or terminate a benefit. BAM 220 (April 2016), p. 1. The negative action date is the day after the timely hearing request date on the Department's notice of case action. BAM 220, p. 11. The timely hearing request date is the last date on which a client can request a hearing and have benefits continued or restored pending the hearing. BAM 220, pp. 11-12. It is always the day before the negative action is effective. BAM 220, p. 12. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. BAM 220, p. 12. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p. 12.

If the requirement is met before the negative action effective date, then the Department will enter the information the client provided to meet the requirement that caused the negative action. BAM 220, p. 13. The Department will then delete the negative action by reactivating the program, running eligibility and certifying the results. BAM 220, p. 13. The Department will recalculate benefits based on the information and dates entered in the system. BAM 220, p. 13.

Based on the above policy, Petitioner clearly met the requirement when he submitted the verifications on ██████████, which was well before the negative action effective date (negative action date was on or around ██████████). BAM 220, p. 13. Because Petitioner met the verification requirement before the negative action date, the Department testified that it reinstated the MA and MSP benefits effective ██████████. In fact, the Department presented evidence that it sent Petitioner a determination notice on ██████████, which notified him that his MA benefits were approved with a \$510 monthly deductible effective ██████████ and his MSP benefits were approved (full coverage) effective ██████████. See Exhibit C, p. 1. The Department testified that it was unclear why the determination notice did not indicate the MSP benefits were approved effective ██████████. Nonetheless, the Department presented an Eligibility Summary, which showed that Petitioner had no lapse in MA or MSP coverage. See Exhibit C, pp. 5-6. Even though these actions were subsequent to Petitioner's hearing request, Petitioner's MA and MSP issue had been resolved. Because Petitioner's MA/MSP issue had been resolved and there had been no lapse in coverage, his MA/MSP hearing request is DISMISSED.

It should be noted that Petitioner testified that beginning in June 2016, his Social Security check decreased because he was responsible for his Medicare premium. Petitioner did have to pay his premium at one point because his MSP benefits did close before they were ultimately reinstated. Petitioner sought to be reimbursed for his MSP benefits and there was no dispute from the Department that Petitioner should be

reimbursed, but that it does take time to initiate the reimbursement. Nonetheless, the undersigned lacks any jurisdiction to address this issue as it occurred subsequent to Petitioner's hearing request. See Exhibit 1, p. 8 (Letter from Social Security Administration dated [REDACTED], indicating that he is responsible for the Medicare Part B premium). Furthermore, Petitioner's hearing request does not dispute the amount of his MSP benefits, nor does it address seeking reimbursement of his premium. See Exhibit A, pp. 2-3. Petitioner can attempt to file another hearing to dispute this MSP issue. See BAM 600 (October 2015), pp. 1-6.

FAP benefits

In regard to Petitioner's FAP benefits, his benefits were not reinstated because the Department testified that he never submitted the mid-certification by the end of April 2016.

Redetermination, semi-annual and mid-certification forms are often used to redetermine eligibility of active programs. BAM 210 (January 2016), p. 1.

For FAP only, the Department sends a DHS-2240-A, Mid-Certification Contact Notice, for groups assigned a 24-month benefit period during the 11th month of their benefit period. BAM 210, p. 8. In this case, the 11th month of Petitioner's benefit period would have been March 2016 because on [REDACTED] the Department sent Petitioner a mid-certification contact notice, which advised Petitioner of his upcoming FAP and MA mid-certification review. The form was due back by April 1, 2016. See Exhibit B, pp. 1-3.

Groups assigned a 24-month benefit period must submit a complete DHS-2240-A, Mid-Certification Contact Notice. BAM 210, p. 9. The DHS-1046 and DHS-2240A may be completed by the client, the client's authorized filing representative or by the specialist (during a telephone call, home call or interview with the client). BAM 210, p. 9. However, the form must be signed by the client or authorized filing representative. BAM 210, p. 9.

A report is considered complete when all of the sections (including the signature section) on the DHS-1046 and the DHS 2240-A are answered completely and required verifications are returned by the client or client's authorized representative. BAM 210, p. 9. If an expense has changed and the client does not return proof of the expense, but all of the sections on the report are answered completely, remove the expense from the appropriate data collection screen in Bridges before running eligibility determination and benefit calculation (EDBC). BAM 210, p. 9.

The mid-certification contact notice must be recorded, data collection updated and EDBC results certified in Bridges by the last day of the 12th month after a completed DHS-2240-A and all required verifications are received. BAM 210, p. 9. Note, run EDBC even if the client indicates no changes so Bridges will recognize the DHS-2240-A has been processed. BAM 210, p. 9.

For FAP only, if the DHS-2240A is not logged in Bridges by the 10th day of the 12th month, Bridges will generate a DHS-2240B, Potential Food Assistance (FAP) Closure, to the client. BAM 210, p. 11. This reminder notice explains that the client must return the DHS-2240A and all required verifications by the last day of the month, or the case will close. BAM 210, p. 11.

If the client fails to return a complete DHS-2240A by the last day of the 12th month, Bridges will automatically close the case. BAM 210, p. 11. If the client reapplies, treat it as a new application and Bridges will prorate the benefits. BAM 210, p. 11.

During the hearing, it was discovered that the DHS-2240B, Potential Food Assistance (FAP) Closure, was never issued to the Petitioner. The undersigned asked the Department why the Potential Food Assistance (FAP) Closure notice was never issued as Petitioner failed to submit the mid-certification. In response, the Department indicated that Bridges (the Department's system) would not issue the notice because Petitioner was already in negative action due to the verification issue. As stated in the previous analysis, the Department sent Petitioner a VCL, which was due by [REDACTED], [REDACTED]. Petitioner failed to submit the verifications by the due date and on [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits would close effective [REDACTED]. See Exhibit A, pp. 11-12. During this same time period, Petitioner was also responsible to submit the mid-certification, which he failed to do. Thus, because he was already in negative action for his failure to submit the verifications, the Department argued that it would not issue the Potential Food Assistance (FAP) Closure notice.

Based on the foregoing information and evidence, the Department improperly closed Petitioner's FAP benefits effective [REDACTED].

First, policy states that if the DHS-2240A is not logged in Bridges by the 10th day of the 12th month, the Department will generate a DHS-2240B, Potential Food Assistance (FAP) Closure, to the client. BAM 210, p. 11. Policy does not state that it "may" or "should" generate the notice, it states that it "will" generate the notice. Because Petitioner failed to submit the mid-certification by the 10th day of the 12th month, which would have been April 10, 2016, the Department must have generated a Potential Food Assistance (FAP) Closure to Petitioner. BAM 210, p. 11. Because the Department failed to generate a Potential Food Assistance (FAP) Closure, the Department did not act in accordance with Department policy when it closed his FAP benefits effective May 1, 2016. BAM 210, p. 11.

Second, another issue arose as to why the Department must have generated the notice. As stated in the previously analysis, Petitioner clearly met the requirement when he submitted the verifications on [REDACTED], which was well before the negative action effective date (negative action date was on or around [REDACTED]). BAM 220, p. 13. Because he met the requirement on [REDACTED], the Department deleted the negative action and the verification requirement is no longer an issue. BAM 220, p. 13. Now, at this point, the only outstanding issue on April 8, 2016, is Petitioner's mid-certification. As stated perilously if the DHS-2240A is not logged in Bridges by the 10th

day of the 12th month, the Department will generate a DHS-2240B, Potential Food Assistance (FAP) Closure, to the client. BAM 210, p. 11. The 10th day of the 12th month in this case is [REDACTED], which is after the date in which Petitioner's negative action for the verification issue had been deleted. Thus, the Department should have generated the Potential Food Assistance (FAP) Closure, as this was the only negative action present at the time.

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) Petitioner's MA/MSP hearing request is dismissed due to the Department's subsequent action of reinstating benefits; and (ii) the Department did not act in accordance with Department policy when it closed Petitioner's FAP benefits effective [REDACTED].

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to MA/MSP benefits and **REVERSED IN PART** with respect to FAP benefits.

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

EF/hw

Eric J. Feldman
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]

[REDACTED]

Petitioner

[REDACTED]