



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

Date Mailed: August 26, 2016
MAHS Docket No.: 16-010163
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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, an in-person hearing was held on August 22, 2016, from Inkster, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly change Petitioner's and her minor son's Medicaid (MA) coverage from full-coverage to Emergency Services Only (ESO) coverage?

Did the Department properly close Petitioner's Food Assistance Program (FAP) case effective August 1, 2016?

Did the Department properly calculate Petitioner's FAP benefits?

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 lives with her three children: her [REDACTED] year old [REDACTED] r; [REDACTED] year old [REDACTED]; and her [REDACTED] year old [REDACTED]
2. Petitioner's [REDACTED] year old [REDACTED] r and [REDACTED] year old [REDACTED] are full-time college students.

3. On February 26, 2016, Petitioner applied, and was approved, for monthly FAP benefits of [REDACTED] for a group consisting of herself and her minor child.
4. On June 1, 2016, the Department sent Petitioner a Semi-Annual Contact Report, requesting that the completed form be returned to the Department by July 1, 2016 or her FAP case would close effective July 31, 2016 (Exhibit F).
5. On July 14, 2016, the Department sent Petitioner a Health Care Coverage Determination Notice notifying her that she and her adult daughter would receive ESO MA coverage effective August 1, 2016 because they were not US citizens or eligible immigrants (Exhibit B).
6. On July 20, 2016, the Department received Petitioner's request for hearing disputing the conversion of her MA case to ESO coverage, the amount of her FAP benefits, and the closure of her FAP case.

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 disputing (i) the conversion of her MA coverage from full to ESO, (ii) the amount of her FAP benefits, and (iii) the closure of her FAP case. With respect to the MA case, Petitioner appealed a July 14, 2016 Health Care Coverage Determination Notice notifying her that she and her adult daughter were, based on lack of US citizenship or eligible immigrant status, approved for ESO MA coverage effective August 1, 2016 (Exhibit B). During the hearing, the Department acknowledged that it had erroneously limited Petitioner's MA case to ESO coverage. However, once Petitioner filed her hearing request and it became aware of the error, the Department converted the MA coverage to full coverage. The Department presented the July 25, 2016 Health Care Coverage Determination Notice notifying Petitioner that her coverage was converted to full coverage effective August 1, 2016 and that her adult daughter referenced in the July 14, 2016 Notice, as well as her adult son, were eligible for full coverage effective May 1, 2016 (Exhibit A). The Department also presented an eligibility summary that showed that two individuals in the household had active full-coverage MA under the Healthy Michigan Plan, one had active full-coverage MA under the Parent/Caretaker Relative Low-Income Family (PCR/LIF) program, and the minor child had active coverage under the Under 19 (U19) program (Exhibit E). Because the Department resolved Petitioner's concerns of ESO MA coverage raised in the July 14, 2016 Health Care Coverage Determination Notice before the hearing, there is no hearable issue concerning MA presented at the hearing. See BAM 600 (October 2015),

pp. 4-5. Therefore, Petitioner's hearing request concerning MA is dismissed. Petitioner's FAP issues are addressed.

FAP

In her hearing request, Petitioner expressed concerns regarding her FAP benefit amount as well as the closure of her 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.

FAP Case Closure

The Department explained that Petitioner's FAP case closed effective August 1, 2016 because Petitioner had failed to complete a semi-annual contact report sent to her on June 1, 2016 and due July 1, 2016 (Exhibit F).

The Department sends a semi-annual contact report is sent to clients with countable earnings and a 12-month benefit period at the beginning of the fifth month of the benefit period. BAM 210 (July 2016), p. 10. Clients must submit the signed form, with all of the sections answered completely and required verifications returned. BAM 210, p. 9. If the DHS-1046 is not logged in by the tenth day of the sixth month, the Department must send the client a DHS-1046A, Potential Food Assistance (FAP) Closure, which explains that the client must return the DHS-1046 and all required verifications by the last day of the month or the case will close. BAM 210, p. 13. If the client fails to return a complete DHS-1046 by the last day of the sixth month, the Department's system (Bridges) will automatically close the case. BAM 210, p. 12. If the completed DHS-1046 and verifications are returned by the last day of the sixth month, the Department must process the changes to ensure the client's benefits are available no later than 10 days after their normal issuance date in the seventh month of the benefit period. BAM 210, p. 12.

In this case, the Department testified that it did not receive a completed semi-annual contact report from Petitioner until August 4, 2016, which was after the case closed on August 1, 2016. Petitioner alleged that she did not receive the semi-annual contact report mailed to her. The Department countered that the form was generated and sent to her by its central office in Lansing. The address on the copy of the notice sent to Petitioner is addressed to Petitioner at her address of record (Exhibit F). Petitioner denied receiving the semi-annual contact report, but her request for hearing indicates that she did receive the Potential FAP Closure notice. Under the evidence presented, Petitioner has failed to rebut the presumption that she received the semi-annual contact report sent to her in the Department's ordinary course of business. See *Goodyear v Roseville*, 468 Mich 944; 664 NW2d 751 (2003).

The Department presented evidence that it received the completed form on August 4, 2016, after the certification period expired. Petitioner contends that she submitted the completed semi-annual report on two occasions at the local office and once online, including copies of her paychecks with the completed form, but she was unable to identify when those documents were submitted or provide copies of the submitted documents.

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 acted in accordance with Department policy when it closed Petitioner's FAP case effective August 1, 2016 for failure to return the completed the semi-annual contact form.

FAP Benefit Calculation

Petitioner also expressed a concern regarding the calculation of her FAP benefits. While a client must request a hearing within 90 days of the date the Department notifies her of any action concerning her benefit cases, a client may request a hearing disputing the current level of FAP benefits at any time within the benefit period. BAM 600, p. 6. Because Petitioner requested her hearing on July 20, 2016 and there was no evidence presented that Petitioner had received any adverse notice of case action concerning her FAP benefit level within 90 days of the date of her hearing request, the FAP benefit issue was limited to the July 2016 ongoing FAP benefits.

The Department presented a FAP net income budget for June 2016 and July 2016 showing the information it used to calculate Petitioner's FAP benefits those months which was reviewed with Petitioner at the hearing (Exhibit G). The budget showed [REDACTED] in gross monthly earned income, which the Department testified was based on paystubs Petitioner provided at the time she applied for FAP on February 26, 2016 showing [REDACTED] in gross income paid on [REDACTED]; [REDACTED] in gross income paid on [REDACTED]; and [REDACTED] in gross income paid on [REDACTED]. The average of this biweekly pay is multiplied by 2.15 to arrive at a gross monthly income amount. See BEM 505 (July 2016), p. 9. Applying this formula results in gross monthly income of [REDACTED], consistent with the Department's figure.

At the hearing, Petitioner argued that her July income was not [REDACTED] because she was not employed between June 27, 2016 and August 29, 2016, noting that she had a new employment contract she signed on [REDACTED] for the period June 27, 2016 to June 23, 2017 that specified that her start date was [REDACTED].

Department policy provides that income decreases that result in a FAP benefit increase must be effective no later than the first allotment issued 10 days after the date the change was reported, provided necessary verification was returned by the due date. BEM 505, p. 11. A supplement may be necessary in some cases. BEM 505, p. 11.

Petitioner testified that she repeatedly advised her worker by phone and email after the contract was signed on [REDACTED] that she was not employed between June 27, 2016

and August 29, 2016 and would have no income during this period. The first FAP allotment issued 10 days after the date Petitioner testified she reported her change in early July 2016 would be the August 2016 allotment. Therefore, the Department acted in accordance with Department policy when it failed to process Petitioner's change for the July 2016 budget.

Petitioner also argued that the [REDACTED] in gross monthly earned income was greater than her ongoing gross monthly income. There was no evidence that Petitioner timely requested a hearing to dispute the income calculation at the time that her February 2016 application was approved for FAP benefits and she was notified of the income figure used to calculate her FAP allotment. Therefore, the amount of earned income was not disputed at the time it was initially calculated.

Petitioner contended that she had submitted paystubs to her worker showing decreases in income. The Department is required to complete a FAP budget when either (i) it is made aware of or the client reports a change in income that will affect eligibility or benefit level or (ii) a reported change results in the need to convert income to or from a standard monthly amount. BEM 505, p. 10. In this case, although Petitioner testified that she submitted additional check stubs, no check stubs were uploaded to Petitioner's electronic case file other than on March 7, 2016, which the Department testified were the paystubs submitted in connection with her application; on May 12, 2016, when she submitted a copy of her 2015-2016 employment contract; and on July 7, 2016, when the Department received her 2016-2017 employment contract. Under these circumstances, the Department did not have any basis to conclude that Petitioner's income had changed and to complete a new budget.

The budget presented showed two individuals in Petitioner's FAP group, which the Department testified were Petitioner and her [REDACTED]d son. The evidence established that there were four members in Petitioner's household: Petitioner, her [REDACTED] old son, her [REDACTED] year old son, and her [REDACTED] year old daughter. Petitioner testified that her [REDACTED] year old son and [REDACTED] year old daughter were college students. A person between age 18 and 49 and enrolled half-time or more in college is an ineligible student for FAP purposes unless he or she meets one of the eligibility criteria outlined in policy, which includes participating in a work-study program; being employed for at least 20 hours weekly and paid for such employment; having self-employment for at least 20 hours weekly and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours; being mentally or physically unfit to work; or caring for a minor child. BEM 245 (October 2015), pp. 3-4. Student status continues during official school vacations and periods of extended illness but does not continue if the student is suspended or does not intend to register for the next school term (excluding summer term). BEM 245, p. 5. Based on Petitioner's testimony, her two children in college were not eligible FAP members. Therefore, the Department properly included only Petitioner and her [REDACTED]-year-old in Petitioner's FAP group.

The deductions to income shown on the budget were also reviewed with Petitioner. Because none of the FAP group members were over age 60, disabled or disabled veterans, there were no senior/disabled/veteran (SDV) member in the FAP group. See BEM 550 (October 2015), p. 1. For FAP groups with earned income but no SDV members, the Department must reduce the household's gross monthly income by the following deductions: the earned income deduction, the standard deduction (based on group size), unreimbursed child care expenses, child support expenses, and the excess shelter deduction. BEM 554 (June 2016), p. 1; BEM 556 (July 2013), pp. 4-5.

The earned income deduction is equal to 20% of the gross monthly earned income received by the FAP group. BEM 556, p. 3. 20% of Petitioner's gross monthly earned income of [REDACTED] is [REDACTED] as shown on the budget. The budget shows that, based on her two-person FAP group, Petitioner received a [REDACTED] standard deduction for July 2016, even though the standard deduction for a two-person group decreased to [REDACTED] effective July 1, 2016. RFT 255 (July 2016), p. 1. Petitioner confirmed the household had no child support expenses and no out-of-pocket child care expenses. Therefore, Petitioner properly received no deduction for those expenses.

The final deduction available is the excess shelter deduction, which is based on client's monthly shelter expenses and the applicable utility standard for any utilities the client is responsible to pay. BEM 556, pp. 4-5. The excess shelter deduction budget (Exhibit G) showed that the Department considered no monthly housing expenses. Petitioner confirmed that she did not have any monthly mortgage payments. While she testified that she had property tax responsibilities, the Department pointed out that she did not identify those expenses on her application. See BEM 554, pp. 13, 14. Therefore, based on the information available to the Department, it properly used \$0 for monthly shelter expenses in calculating Petitioner's excess shelter deduction.

The utility standard that applies to the calculation of a client's excess shelter deduction is dependent on the client's circumstances. A client is eligible for the [REDACTED] heat and utility (h/u) standard, the most advantageous utility standard available to a client, if the client is responsible for any heating or cooling expenses. BEM 554, pp. 14-20; RFT 255, p. 1. If a client is not eligible for the mandatory h/u standard, she may be eligible for mandatory *individual* standards for non-heat electric, water and/or sewer, telephone, cooking fuel, and/or trash removal, as applicable. BEM 554, pp. 20-23.

In this case, the Department concluded that Petitioner was eligible for only the [REDACTED] telephone standard, as shown on the excess shelter deduction budget, but acknowledged at the hearing that Petitioner had indicated in her application that she was responsible for heat expenses. As such, upon verification, she would be eligible for the [REDACTED] h/u standard rather than the [REDACTED] telephone utility standard. While the Department did not act in accordance with Department policy when it failed to apply the h/u standard in calculating Petitioner's excess shelter deduction, under the circumstances in the present case, where 50% of Petitioner's adjusted gross income exceeds the h/u standard, Petitioner would not be eligible for an excess shelter

deduction even if the Department had properly considered the h/u standard. See BEM 556, pp. 4-5. Therefore, the Department's error is harmless in this case.

When Petitioner's gross income of [REDACTED] is reduced by the [REDACTED] earned income deduction, and the [REDACTED] standard deduction, her net income is [REDACTED]. Based on a FAP group size of two and net income of [REDACTED], Petitioner was eligible for gross monthly FAP benefits of [REDACTED] for July 1, 2016 until her case closed. RFT 260 (October 2015), p. 17.

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 acted in accordance with Department policy when it calculated Petitioner's FAP benefits.

DECISION AND ORDER

Because the Department resolved Petitioner's MA issue prior to hearing, Petitioner's hearing request concerning MA is **DISMISSED**.

The Department's FAP decisions calculating her FAP benefits and closing her FAP case are **AFFIRMED**.

ACE/tlf



Alice C. Elkin

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]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Via Electronic Mail:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]