



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: September 14, 2016
MAHS Docket No.: 16-011370
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 September 7, 2016, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator.

ISSUES

The first issue is whether MDHHS properly determined Petitioner's Food Assistance Program (FAP) eligibility.

The second issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility.

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 FAP benefit recipient.
2. Petitioner received [REDACTED] in unemployment compensation benefits (UCB) in May 2016.
3. On an unspecified date, MDHHS determined Petitioner's FAP eligibility for May 2016, in part, based on excluding Petitioner as a FAP member and by not issuing a [REDACTED] hearing credit.

4. On [REDACTED], MDHHS initiated a pending termination of Petitioner's FAP eligibility, effective August 2016, for the reason that Petitioner failed to timely return a New Hire Client Notice and/or check stubs.
5. On [REDACTED] Petitioner submitted a completed New Hire Client Notice to MDHHS with a check stub.
6. On [REDACTED], an administrative decision ordered MDHHS to recalculate Petitioner's FAP eligibility for May 2016 by including Petitioner as a FAP group member and to factor a [REDACTED] heating credit.
7. On [REDACTED], MDHHS recalculated Petitioner's FAP eligibility for May 2016, in part, based on inclusion of Petitioner as a group member, issuance of a [REDACTED] heating credit, and inclusion of [REDACTED] in UCB (see Exhibit 1, pp. 19-20).
8. On [REDACTED] Petitioner requested a hearing to dispute inclusion of UCB in her FAP eligibility for May 2016; Petitioner separately requested a hearing to dispute the termination of FAP benefits.

CONCLUSIONS OF LAW

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing, in part, to dispute a determination of FAP eligibility. It was not disputed Petitioner specifically objected to FAP eligibility beginning May 2016. Petitioner's only dispute concerned the inclusion of UCB income.

MDHHS presented Petitioner's UCB receipt history (Exhibit 1, pp. 17-18). The documents verified Petitioner received a total of [REDACTED] in UCB for May 2016.

MDHHS presented FAP eligibility budget documents (Exhibit 1, pp. 9-13) for May 2016. The budget documents verified MDHHS factored [REDACTED] in UCB in determining Petitioner's FAP eligibility for May 2016.

Petitioner did not deny receiving UCB income. Despite receipt of the income, Petitioner contended MDHHS should not have factored UCB. Petitioner essentially made two arguments to support her contention. The first requires some procedural background.

Petitioner previously requested a hearing to dispute FAP eligibility for May 2016. The hearing was held on [REDACTED]. Petitioner contended the previously issued administrative decision ordered MDHHS to exclude Petitioner's UCB income in determining Petitioner's FAP eligibility.

MDHHS presented a Hearing Decision (Exhibit 1, pp. 1-7) dated [REDACTED] which corresponded to the [REDACTED], hearing. The "DECISION AND ORDER" stated MDHHS was to recalculate Petitioner's May 2016 FAP eligibility and to remove any FAP disqualification against Petitioner and to include her as a group member, "consider the [REDACTED] mandatory h/u standard, and issue applicable supplements.

It was not disputed that MDHHS recalculated Petitioner's FAP eligibility for May 2016 in full compliance with the "DECISION AND ORDER" section. Petitioner contended MDHHS should have also complied with statements made in the "CONCLUSIONS OF LAW" section which stated the following:

According to the Department, Petitioner received her first unemployment benefit check on [REDACTED]. Taking into consideration the ten days from receipt of pay that Petitioner has to report the change, the ten days the Department has to process the change, and the 12 days negative action notice requirement, Petitioner's unemployment benefits should not be considered in calculating her FAP benefits in May 2016.

MDHHS is required to comply with administrative orders. Administrative orders are found within the "DECISION AND ORDER" section. Any "orders" within the "CONCLUSIONS OF LAW" (or any other part of an administrative hearing decision) are not technically orders. Because MDHHS complied with the order within the "DECISION AND ORDER" section, it is found MDHHS complied with the administrative order.

Alternatively, Petitioner contended that MDHHS should have excluded UCB income based on the processing timeframe as stated by the ALJ in the previously issued administrative decision. It was not disputed that had MDHHS correctly determined Petitioner's FAP eligibility for May 2016 when benefits were issued, the UCB income would have been excluded.

Petitioner's argument is essentially one of equity. Petitioner contended that it is inequitable that MDHHS should issue fewer FAP benefits (after factoring UCB income) which is now only being included within the FAP budget because of an unrelated MDHHS error. Petitioner's argument is sensible, however, MDHHS policy trumps arguments of equity within the administrative hearing process.

[For FAP benefits,] a group's financial eligibility and monthly benefit amount are determined using... actual income (income that was already received) [and] prospected income amounts (not received but expected). BEM 505 (April 2016), p. 1. [For FAP benefits, MDHHS is to] determine budgetable income using countable, available income for the benefit month being processed. *Id.*, p. 2. [For past months, MDHHS is to] use

actual gross income amounts received for past month benefits, converting to a standard monthly amount, when appropriate... *Id.*, p. 2.

The processing timeframes cited by the ALJ within the previously issued administrative are applicable for future benefit issuances; in the present case, they are not applicable. As required by MDHHS policy, MDHHS is to process a past month's eligibility based on "actual gross income amounts"; the [REDACTED] factored by MDHHS accurately reflects Petitioner's actual gross UCB income.

It is found MDHHS properly factored Petitioner's UCB of [REDACTED]. Accordingly, it is found MDHHS properly determined Petitioner's FAP eligibility for May 2016.

Petitioner also requested a hearing, in part, to dispute a termination of FAP eligibility. MDHHS presented a Notice of Case Action (Exhibit 2, pp. 3-5). The notice stated Petitioner's FAP eligibility would end due to Petitioner's failure to timely return a New Hire Client Notice and/or check stubs from recently obtained employment.

The Michigan Department of Health and Human Services (MDHHS) routinely matches recipient data with other agencies through automated computer data exchanges. BEM 807 (January 2016), p. 1). The State New Hires Match is a daily data exchange of information collected by the Michigan New Hire Operations Center and obtained through the Office of Child Support. *Id.* State New Hires information is used to determine current income sources for active MDHHS clients. *Id.* [MDHHS is to] contact the client immediately if the employment has not been previously reported. *Id.* [MDHHS is to] request verification by generating a DHS-4635, New Hire Notice, from Bridges. *Id.*

MDHHS presented a New Hire Client Notice (Exhibit 2, pp. 1-2). The notice was completed by Petitioner and included a MDHHS office date stamp of [REDACTED]. MDHHS conceded the notice was returned within sufficient time to cease the pending FAP benefit closure. The concession is consistent with MDHHS policy which allows clients at least 10 days following issuance of timely written notice to submit missing documents (see BAM 220). Thus, it need not be considered whether Petitioner timely returned a New Hire Client Notice. MDHHS contended Petitioner's failure to include check stubs with the New Hire Client Notice justified the closure of Petitioner's FAP eligibility.

For starting income, [MDHHS is to] use the best available information to prospect income for the benefit month. BEM 505 (April 2016), p. 7. This may be based on expected work hours times the rate of pay. *Id.* Or if payments from the new source have been received, use them in the budget for future months if they accurately reflect future income. *Id.*

Policy allows MDHHS to require check stubs for recently started employment. Petitioner and MDHHS disputed whether a necessary check stub was included with Petitioner's New Hire Client Notice.

MDHHS testimony alleged Petitioner's electronic case file (ECF- the electronic record of Petitioner's document submissions) failed to display a check stub associated with Petitioner's employment. Petitioner testified she submitted a check stub with her New Hire Client Notice. Neither MDHHS nor Petitioner verified their testimony.

The testifying MDHHS specialist was credible. Thus, it is believed Petitioner's ECF did not include a copy of her check stub. Though Petitioner's ECF may not have included a check stub, it does not verify that Petitioner did not submit one.

MDHHS offices are known to send all client document submissions to a central location. The central location is known to scan the documents into the respective client's ECF and label them. The procedure is generally reliable, however, it is plausible that some document submissions are lost or misprocessed. The outcome will hinge on Petitioner's credibility.

Petitioner testified she was interviewed by an employer on [REDACTED]. Petitioner testified she did not begin employment until [REDACTED].

Petitioner testified she spoke with a MDHHS supervisor on [REDACTED] and reported her new employment information. Petitioner's testimony was consistent with MDHHS case notes documenting a conversation between a supervisor and Petitioner.

Petitioner testified after her previously held administrative hearing, the testifying MDHHS hearing facilitator advised her to submit the New Hire Client Notice and check stub; the testifying MDHHS hearing facilitator corroborated Petitioner's testimony. Petitioner testified she immediately walked from the hearings room to the front desk and handed MDHHS staff an envelope with her New Hire Client Report; underneath the report was a copy of the one check stub she received.

Petitioner's testimony was detailed and consistent with all MDHHS evidence other than whether the check stub was submitted. Petitioner's testimony was also indicative of someone trying to perform all actions to ensure the continuance of benefits.

Based on presented evidence, it is found Petitioner submitted a check stub to MDHHS on [REDACTED]. Accordingly, it is found MDHHS improperly terminated Petitioner's FAP eligibility due to Petitioner's alleged failure to submit a check stub.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner's FAP eligibility for May 2016 by including Petitioner's actual unemployment income of [REDACTED]. The actions taken by MDHHS are **PARTIALLY AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FAP eligibility. It is ordered

that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reinstate Petitioner's FAP eligibility, effective August 2016, subject to the finding Petitioner submitted a check stub to MDHHS on [REDACTED], which was timely enough to cease a pending termination of benefits initiated on [REDACTED]; and
- (2) Issue a supplement of any FAP benefits improperly not issued.

The actions taken by MDHHS are **PARTIALLY REVERSED**.

CG/hw



Christian Gardocki

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]