



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: October 21, 2016
MAHS Docket No.: 16-012818
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 October 12, 2016, from Detroit, Michigan. Petitioner appeared and was represented by her son, [REDACTED], who also testified and translated. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator.

ISSUES

The first issue is whether MDHHS properly denied Petitioner's Family Independence Program (FIP) application.

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. On [REDACTED], Petitioner applied for FIP benefits.
2. Petitioner's application for FIP benefits claimed a long-term disability.
3. Petitioner's FIP application listed Petitioner was a primary caretaker for grandchildren.
4. MDHHS did not defer Petitioner from PATH participation.

5. MDHHS did not evaluate Petitioner for FIP eligibility based on being an ineligible grantee.
6. On [REDACTED], MDHHS denied Petitioner's FIP application due to her failure to attend PATH.
7. Petitioner received ongoing FAP benefits from the State of Michigan.
8. Petitioner received ongoing FAP benefits from the State of [REDACTED]
9. On [REDACTED], MDHHS initiated termination of Petitioner's FAP eligibility, effective September 2016, due to Petitioner receiving out-of-state FAP benefits.
10. On [REDACTED], Petitioner reported to MDHHS that her State of [REDACTED] benefits stopped.
11. MDHHS did not process Petitioner's reported change.
12. On [REDACTED], Petitioner requested a hearing to dispute the denial of FIP benefits and the termination of FAP benefits.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, and 42 USC 601 to 679c. MDHHS (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10 and 400.57a and Mich Admin Code, R 400.3101 to .3131. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Before an analysis of Petitioner's dispute, it should be noted that Petitioner noted a need for a special hearing accommodation. Petitioner's hearing request stated she only speaks Arabic and is wholly illiterate. Petitioner's son appeared with Petitioner and translated for her. Petitioner testified she required no further accommodation and the hearing was conducted accordingly.

Petitioner requested a hearing, in part, to dispute a denial of FIP benefits. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 1-2) dated [REDACTED], stating that Petitioner's application was denied due to Petitioner's failure to attend PATH.

Federal and state laws require each work eligible individual (WEI) in the FIP group to participate in Partnership. Accountability. Training. Hope. (PATH) or other employment-related activity unless temporarily deferred or engaged in activities that meet participation requirements. BEM 230A (October 2015), p. 1. PATH is administered by the Workforce Development Agency, State of Michigan through the Michigan one-stop

service centers. *Id.* PATH serves employers and job seekers for employers to have skilled workers and job seekers to obtain jobs that provide economic self-sufficiency. *Id.*

Completion of the 21 day PATH application eligibility period (AEP) part of orientation is an eligibility requirement for approval of the FIP application. BEM 229 (October 2015), p. 1. PATH participants must complete all of the following in order for their FIP application to be approved: begin the AEP by the last date to attend as indicated on the PATH Appointment Notice[,] complete PATH AEP requirements[, and] continue to participate in PATH after completing the 21 day AEP. *Id.* [MDHHS] is to deny the FIP application if an applicant does not complete all of the above three components of the AEP. *Id.*

It was not disputed Petitioner failed to attend PATH after MDHHS issued her a PATH appointment notice (see Exhibit 1, p. 5). As it happened, MDHHS committed two separate failures that negated the need for Petitioner to attend PATH.

Petitioner alleged she is an illiterate, non-English speaking, disabled individual. MDHHS testimony conceded Petitioner claimed a disability on her FIP application.

At application, the registration support staff must provide clients with a DHS-619, Jobs and Self-Sufficiency Survey. BEM 229 (October 2015), p. 1. Specialists must... review the survey or the PDF copy of the application from MI Bridges, and other information in the case record and Bridges during the intake interview to make a preliminary barrier assessment to determine the client's readiness for PATH referral. *Id.*, p. 1-2. [MDHHS is to] temporarily defer an applicant with identified barriers until the barrier is removed. *Id.*

At intake, redetermination or anytime during an ongoing benefit period, when an individual claims to be disabled or indicates an inability to participate in work or PATH for more than 90 days because of a mental or physical condition, the client should be deferred in Bridges. BEM 230A (October 2015), p. 11. Conditions include medical problems such as mental or physical injury, illness, impairment or learning disabilities. *Id.*

MDHHS describes the first step of PATH deferral as "Establishment of disability" (see *Id.*, p. 12). Once a client claims a disability he/she must provide MDHHS with verification of the disability when requested. *Id.* The verification must indicate that the disability will last longer than 90 calendar days. *Id.* If the verification is not returned, a disability is not established. *Id.*

It was not disputed that MDHHS sent Petitioner to PATH without considering a medical deferral. The failure to initially defer Petitioner from PATH violates MDHHS policy.

Though MDHHS did not defer Petitioner, MDHHS testimony indicated verification of Petitioner's disability was requested on [REDACTED]. The due date for Petitioner to return the documents was [REDACTED]. Instead of awaiting to see if Petitioner returned

the documents, MDHHS denied Petitioner's application on [REDACTED]. The failure by MDHHS to allow Petitioner until her due date to verify her claim of disability was erroneous.

Yet another problem arose for MDHHS concerning the FIP benefit denial. As a grandmother of minor children, Petitioner is an optional FIP group member (see BEM 210). As an optional group member, Petitioner could have been evaluated for FIP benefits as an "ineligible grantee." If Petitioner was eligible to receive FIP benefits as an ineligible grantee, she would have no obligation to attend PATH and would have received FIP benefits as a grantee for her grandchildren.

It is found MDHHS improperly denied Petitioner's FIP application. The analysis will proceed to evaluate Petitioner's FAP benefit dispute.

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 termination of FAP benefits. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 3-4) dated [REDACTED], stating that Petitioner's FAP eligibility ceased due to receiving FAP benefits from another state.

Benefit duplication means assistance received from the same (July 2013), p. 1. A person cannot receive FAP in more than one state for any month. *Id.*, p. 3.

MDHHS testimony alleged Petitioner received FAP benefits from the State of [REDACTED] and the State of Michigan in August 2016. Petitioner conceded that the allegation was correct.

It is found MDHHS properly initiated termination of Petitioner's FAP eligibility, effective September 2016, due to Petitioner's receipt of FAP benefits from [REDACTED]. The analysis must proceed to consider two issues arising after MDHHS initiated benefit termination.

Petitioner and her son testified that MDHHS sent a representative to her home in mid-to-late August 2016. The specific date was not identified by Petitioner or MDHHS, but it is estimated to have occurred on [REDACTED] (halfway between the middle and end of August 2016). Based on the presented case's circumstances, it is assumed the representative was an investigator dispatched to determine if Petitioner committed fraud. Petitioner and her son each testified that the investigator was informed that Petitioner's [REDACTED] benefits had ended; the testimony was credible and unrebutted.

There are two types of written notice: adequate and timely. BAM 220 (1/2014), p. 2. An adequate notice is a written notice sent to the client at the same time an action takes effect (not pended). *Id.* A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pended to provide the client a chance to react to the proposed action. *Id.*, p. 4.

In the circumstance of a FAP closure due to receipt of out-of-state FAP benefits, timely notice is required (see BAM 220). Thus, Petitioner's FAP benefit case was still open as of the date she reported her FAP eligibility in [REDACTED] had stopped.

[For FAP benefits, MDHHS is to] act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (July 2015), p. 7. [For benefit increases,] changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. *Id.* If verification is returned late, the increase must affect the month after verification is returned. *Id.*

[For all programs, MDDHS is to] use the DHS-3503, Verification Checklist to request verification. BAM 130 (July 2015), p. 3. [MDDHS must] allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. *Id.*, p. 6. [MDHHS] must tell the client what verification is required, how to obtain it, and the due date. *Id.*, p. 3.

Petitioner's reported change to an investigator is deemed to be a sufficient reporting to MDHHS. Based on the reporting, MDHHS should have responded by mailing a VCL requesting proof of Petitioner's allegedly stopped [REDACTED] FAP benefits. If Petitioner timely responded, then MDHHS should have ceased the pending closure (or reinstated Petitioner's FAP eligibility if the case closed). If Petitioner failed to timely respond, then Petitioner's FAP eligibility would have properly closed. MDHHS presented no evidence that a VCL was ever sent to Petitioner.

It is found MDHHS failed to process Petitioner's reported stoppage in [REDACTED]-issued FAP benefits. The analysis will proceed to address a hearing-related procedural failure by MDHHS.

A timely hearing request is a request received by the department within 10 days of the date the notice of case action was issued. BAM 600 (October 2015), p. 24. While waiting for the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. *Id.* Upon receipt of a timely hearing request, [MDHHS is to] reinstate program benefits to the former level for a hearing request filed because of a negative action. *Id.*

Petitioner requested a hearing on [REDACTED]. The request was received by MDHHS on the 8th day following issuance of the notice of closure. The hearing request

specified that Petitioner wanted to continue receiving FAP benefits pending the hearing outcome. MDHHS testimony conceded Petitioner's FAP eligibility ended despite her timely hearing request. MDHHS will be ordered to reinstate Petitioner's FAP eligibility, regardless of Petitioner's response to the yet to be sent VCL.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's FIP eligibility and 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 FIP application dated [REDACTED];
- (2) Process Petitioner's FIP application subject to the following findings:
 - a. MDHHS failed to evaluate Petitioner for possible PATH deferral based on Petitioner's claim of disability; and
 - b. MDHHS failed to evaluate Petitioner for FIP benefits based on ineligible grantee status; and
- (3) Reinstate Petitioner's FAP eligibility, effective September 2016, subject to the following findings:
 - a. MDHHS failed to issue ongoing FAP eligibility based on Petitioner's timely hearing request; and
 - b. MDHHS failed to process Petitioner's reported change from [REDACTED], [REDACTED] that Petitioner's FAP eligibility from the State of [REDACTED] stopped.

The actions taken by MDHHS are **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]

Authorized Hearing Rep.

[REDACTED]