



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: December 29, 2016
MAHS Docket No.: 16-015490
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, an in-person was held on December 21, 2016, from Detroit, Michigan. Petitioner did not appear and was represented by his attorney, [REDACTED], [REDACTED] hearing facilitator, and [REDACTED], specialist, testified on behalf of the Michigan Department of Health and Human Services (MDHHS). [REDACTED] of the Office of Attorney General appeared, via telephone, as legal counsel for MDHHS.

ISSUES

The first issue is whether MDHHS properly terminated Petitioner's Medical Assistance (MA) 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 and MA benefit recipient.
2. Petitioner's FAP benefit period was certified through August 2016.
3. On an unspecified date, MDHHS terminated Petitioner's MA eligibility, effective August 2016.

4. On [REDACTED], MDHHS requested proof of Petitioner's spouse's income.
5. On [REDACTED], Petitioner submitted proof of his spouse's income.
6. On [REDACTED], MDHHS mailed Petitioner notice of a FAP termination, effective September 2016.
7. On [REDACTED], MDHHS mailed Petitioner notice of a MA termination, effective September 2016.
8. On [REDACTED], Petitioner requested a hearing to dispute the terminations of MA and FAP benefits.

CONCLUSIONS OF LAW

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. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. 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 MA eligibility. MDHHS presented a Health Care Coverage Determination Notice (Exhibit 1, pp. 1-3) dated September 30, 2016. The stated reason for MA termination, effective September 2016, was Petitioner's failure to verify income. It was not disputed that the alleged failure involved Petitioner's spouse's income. As it happened, the dispute was moot.

There are two types of written notice: adequate and timely. BAM 220 (July 2016), 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.

MDHHS testimony conceded Petitioner's MA eligibility stopped beginning August 2016. MDHHS conceded notice was never sent concerning the stoppage in MA benefits for August 2016. MDHHS testimony conceded the notice sent [REDACTED], was improper for failing to address August 2016 eligibility, as well as not being sent during a time Petitioner's MA was active. MDHHS further conceded the proper remedy was to reinstate Petitioner's MA eligibility, effective August 2016. The MDHHS concessions

were consistent with policy and presented facts. It is found MDHHS improperly terminated Petitioner's MA eligibility due to improper notice.

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 beginning September 2016. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 4-7) dated [REDACTED]. The stated reason for FAP benefit termination was Petitioner's alleged failure to verify income. Again, it was not disputed the failure involved verification of the income of Petitioner's spouse. Some facts were also not disputed.

Petitioner's FAP eligibility was certified through August 2016. As part of Petitioner's FAP redetermination, MDHHS mailed Petitioner a Verification Checklist (VCL) (Exhibit 1, pp. 10-11) dated [REDACTED], requesting 30 days of income. The VCL mailing included a Verification of Employment mistakenly listing Petitioner's name when MDHHS was trying to verify Petitioner's spouse's income. On [REDACTED], MDHHS corrected the error by mailing Petitioner a Verification of Employment listing Petitioner's spouse's information. MDHHS sent notice of FAP termination on [REDACTED]. MDHHS received the completed Verification of Employment on [REDACTED].

[For FAP benefits,] the redetermination process begins when the client files a DHS-1171, Assistance Application; DHS-1010, Redetermination; DHS-1171, Filing Form; or DHS-2063B, Food Assistance Benefits Redetermination Filing Record. BAM 210 (July 2016), p. 3. Benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. *Id.* The DHS-3503, Verification Checklist, should be sent after the redetermination interview for any missing verifications allowing 10 days for their return. *Id.*, p. 16. Verifications must be provided by the end of the current benefit period or within 10 days after they are requested, whichever allows more time. *Id.*

Based on the facts that were not disputed, MDHHS properly terminated Petitioner's FAP eligibility. There was one disputed fact- Petitioner (through his counsel) alleged he submitted proof of his spouse's income to MDHHS on [REDACTED].

It should be noted that MAHS received a request for summary disposition from Petitioner on [REDACTED]
[REDACTED] the one disputed fact.

Petitioner's attorney presented a copy of an email (Exhibit 1, p. 1). The email was allegedly sent by Petitioner to Petitioner's specialist on [REDACTED]. The email copy stated the Verification of Employment (Exhibit A, pp. 2-3) was attached in the email. MDHHS testimony denied receiving the email. The simple dispute of whether MDHHS received Petitioner's email was more complex than it should have been.

Petitioner bothered to request an in-person hearing. Petitioner bothered to retain legal counsel. MDHHS appeared for the hearing with 2 witnesses and legal counsel. Petitioner's attorney appeared for the hearing. Petitioner did not appear for the hearing.

MDHHS did not dispute the email copy listed Petitioner's specialist as the recipient. During the hearing, Petitioner's specialist was asked if she received the email. Petitioner's specialist responded she searched her emails that morning but did not uncover Petitioner's alleged email. Petitioner's specialist then testified, "It's gotta be there, I guess." The specialist subsequently testified, "I guess I must have gotten it."

A stringent interpretation of the Michigan Rules of Evidence could justify rejecting the email due to a lack of authenticity and/or foundation (see MRE 901). Some flexibility is given to the rules of evidence in administrative hearings.

The presented email appeared to be what Petitioner's attorney claimed it to be. It contained a date, time, addressee, and content including the name and size of the attachment. Despite Petitioner's absence from the hearing, the email copy appeared to be sufficiently authentic.

The attached Verification of Employment also happened to be dated on the same date the email was allegedly sent. It is reasonably possible that Petitioner obtained the Verification of Employment and later that date, scanned and emailed the document. This consideration lends support for the email copy's authenticity.

There is a possibility that the presented email copy was faked, however, the possibility is not particularly likely. As Petitioner's attorney pointed out, the document speaks for itself. It is found the email copy verified Petitioner sent requested verification information to MDHHS on [REDACTED]. Thus, it is found that Petitioner timely complied with the VCL request and that the corresponding FAP benefit termination was improper.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FAP and MA 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 MA eligibility, effective August 2016 subject to the finding that MDHHS improperly mailed notice of termination;

(2) Process Petitioner's FAP eligibility, effective September 2016, subject to the finding that MDHHS received Petitioner's spouse's income verification on [REDACTED]; and

(3) Issue a supplement of any benefits improperly not issued.

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

Counsel for Respondent

[REDACTED]

DHHS

[REDACTED]

Petitioner

[REDACTED]

Counsel for Petitioner

[REDACTED]