



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: January 11, 2017
MAHS Docket No.: 16-018448
Agency No.: ██████████
Petitioner: ██████████

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, an in-person hearing was held on January 9, 2017, from Detroit, Michigan. The Petitioner was represented his Authorized Hearing Representative (AHR), ██████████, from ██████████; and Petitioner, ██████████. The Department of Health and Human Services (Department) was represented by ██████████ ██████████, Hearings Facilitator; and ██████████ ██████████, Family Independence Specialist worker.

ISSUES

Did the Department properly reduce Petitioner's Food Assistance Program (FAP) benefits to ██████████ for December 1, 2016 to December 31, 2016?

Did the Department properly close Petitioner's Family Independence Program (FIP) benefits effective January 1, 2017?

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 is an ongoing recipient of FAP and MA benefits. Exhibit A, p. 24.
2. Petitioner was an ongoing recipient of FIP benefits.

3. Petitioner's FAP benefits decreased from ██████████ for December 1, 2016 to December 31, 2016. Exhibit A, p. 24.
4. Petitioner's FAP benefits increased back to ██████ effective January 1, 2017. Exhibit A, p. 24.
5. On January 14, 2014, Petitioner applied for Supplemental Security Income (SSI) benefits through the Social Security Administration (SSA). Exhibit A, p. 4.
6. On an unspecified date, SSA denied Petitioner's application for disability and he appealed the decision on March 27, 2014. Exhibit A, p. 4.
7. On an unspecified date, a disability hearing was held in front of a Social Security Administrative Law Judge and he or she found Petitioner not disabled and issued an Unfavorable Decision on July 18, 2016. Exhibit A, p. 4.
8. Petitioner did not reapply for SSI benefits.
9. On or about October of 2016, Petitioner indicated he was unable to participate in the Partnership. Accountability. Training. Hope. (PATH) program and requested a deferral from the program because he claimed a disability lasting longer than 90 calendar days. Exhibit A, p. 6.
10. On or about October 7, 2016, the Department requested that Petitioner complete several medical forms showing that the disability will last longer than 90 calendar days. Exhibit A, pp. 14-23.
11. On October 17, 2016, Petitioner submitted medical forms showing that the disability would last longer than 90 calendar days. See Exhibit A, pp. 14-23.
12. After Petitioner has verified a disability lasting longer than 90 calendar days, he must apply for or appeal benefits through SSA, which is a condition of FIP eligibility. See BAM 815 (January 2016), pp. 1-2.
13. On November 2, 2016, the Department sent Petitioner a Notice to Apply (DHS-1551) requesting that he provide proof that he applied for SSI by November 12, 2016. Exhibit A, p. 2.
14. Petitioner failed to complete/return the Notice to Apply (DHS-1551) by the due date.
15. On December 1, 2016, the Department sent Petitioner a Notice of Case Action notifying him that his FIP benefits would close effective January 1, 2017 because he failed to complete/return the Notice to Apply (DHS-1551) by the due date. Exhibit A, pp. 8-10.

16. On December 6, 2016, Petitioner's AHR filed a hearing request, protesting the Department's action. Exhibit A, pp. 12-13.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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 also requested a hearing in which he disputed his MA benefits. Exhibit A, pp. 12-13. Shortly after commencement of the hearing, Petitioner indicated that he was no longer disputing his MA benefits as the issue had been resolved. As such, Petitioner's MA hearing request is DISMISSED. Nonetheless, Petitioner still disputed the decrease in his FAP benefits for December 2016 and the closure of his FIP benefits effective January 1, 2017. Exhibit A, p. 12. The undersigned Administrative Law Judge (ALJ) addresses Petitioner's FAP and FIP issues below:

FAP allotment

In the present case, Petitioner's FAP benefits decreased from ██████ in November 2016 to ██████ for December 2016. Exhibit A, p. 24. As such, Petitioner disputed the decrease in his FAP benefits for December 2016. Exhibit A, p. 12. However, the Department failed to provide the undersigned ALJ a FAP and shelter budget showing how the Department calculated the decrease in his benefits. It should be noted that towards the end of the hearing, the Department did provide a FAP budget for December 2016, but this was the first time the Department had presented such a document and failed to include the budget with the original hearing packet sent to the Petitioner/AHR. See BAM 600 (October 2016), pp. 8-10 (the Department completes a hearing pack to include, but not limited to...a copy of all documents the Department intends to offer as exhibits at the hearing). Furthermore, the Department only presented a FAP budget at the end of the hearing, and not a shelter budget, which, as stated above, is a necessary document the undersigned ALJ reviews when determining whether the decrease in benefits was proper. And finally, the Department acknowledged during the hearing that it would recalculate the FAP budget for December 2016.

Based on the forgoing information and evidence, the undersigned ALJ finds that the Department failed to satisfy its burden of showing that it properly decreased Petitioner's FAP benefits for December 1, 2016 to December 31, 2016. Accordingly, the Department is ordered to recalculate the FAP budget for December 2016 in accordance with Department policy.

FIP closure

In the present case, the Department argued that it closed Petitioner's FIP benefits because he failed to complete/return the Notice to Apply (DHS-1551) by the due date. Exhibit A, pp. 8-10. However, Petitioner/AHR disagreed.

Policy states that for verified disabilities over 90 days, the client must apply for benefits through SSA before the Department refers the case over to the Disability Determination Service (DDS) for a medical determination. See BEM 230A (October 2015), p. 12.

BAM 815, Medical Determination and Disability Determination Service (DDS) and BEM 270, Pursuit of Benefits, provides further policy guidance regarding Petitioner's requirement to apply for benefits through SSA before the case is referred to DDS.

BAM 815 states that after a client has verified a disability lasting longer than 90 calendar days, clients must apply for or appeal benefits through SSA and this is a condition of program eligibility. BAM 815, p. 1.

BEM 270 states that as a condition of eligibility, individuals must apply for any state and/or federal benefits for which they may be eligible. BEM 270 (April 2016), p. 1. This includes taking action to make the entire benefit amount available to the group. BEM

270, p. 1. Refusal of a program group member to pursue a potential benefit results in group ineligibility. BEM 270, p. 1. For individuals applying for FIP benefits, verification must be obtained from SSA that an application or appeal is on file before the case is referred to the DDS. BEM 270, p. 7. Verification sources include:

- Single Online Query (SOLQ).
- DHS-1552, Verification of Application for SSI from SSA.
- Correspondence from SSA.
- Telephone or other contact with SSA.

BEM 270, p. 8 and see BAM 815, p. 8.

In the present case, Petitioner previously applied for SSI on January 14, 2014, his application was denied, and he appealed the denial. Exhibit A, p. 4. Petitioner then subsequently attended a disability hearing in front of a Social Security ALJ and he or she found Petitioner not disabled and issued an Unfavorable Decision on July 18, 2016. Exhibit A, p. 4. All of these events occurred before Petitioner's request to be deferred from the PATH program.

Now, once Petitioner claimed to be disabled and unable to participate in the PATH program, policy states that as a condition of FIP eligibility, he must apply for or appeal benefits through SSA. BAM 815, p. 1. This means that Petitioner either had to reapply for SSI benefits or request an Appeals Council review within 60 days of the SSI hearing decision date in order to meet this eligibility. See BEM 271 (January 2016), pp. 8-10. In order to verify if whether Petitioner had reapplied for SSI benefits, the Department sent him a Notice to Apply (DHS-1551) on November 2, 2016 requesting that he provide proof that he applied for SSI by November 12, 2016. Exhibit A, p. 2. However, Petitioner failed to complete/return the Notice to Apply (DHS-1551) by the due date. As such, the Department closed his FIP benefits because he failed to complete/return the Notice to Apply (DHS-1551) by the due date. Exhibit A, pp. 8-10.

In response, Petitioner/AHR argued and/or asserted the following: (i) upon receipt of his Unfavorable Decision from SSA, he informed his lawyer that he wanted to appeal the decision to the Appeals Council, but was unsure if his lawyer in fact appealed it; (ii) he acknowledged that he did not reapply for SSI benefits; (iii) he did not dispute that he received the Notice to Apply (DHS-1551) and that he did not complete the form by the due date; (iv) he stated that he did provide the 1st page of a letter from his lawyer regarding the SSI application to the Department when he submitted his medical verifications on October 17, 2016 (Exhibit A, pp. 14-23); and (v) he complied with the verification request showing that he applied for SSA benefits when he submitted the letter from his lawyer even before the request for this information was generated.

Based on the foregoing information and evidence, the Department properly closed Petitioner's FIP benefits effective January 1, 2017. As stated above, policy states that after Petitioner has verified a disability lasting longer than 90 calendar days, he must

apply for or appeal benefits through SSA and this is a condition of program eligibility. BAM 815, p. 1. Petitioner had two options to meet this eligibility requirement, either to reapply for SSI benefits or appeal his decision to the Appeals Council. In regards to the Appeals Council, Petitioner failed to present any evidence showing that his decision was appealed. A review of Petitioner's SOLQ found no indication in the "Appeal Code" section of that document that his decision was with the Appeals Council. See Exhibit A, p. 4. Thus, Petitioner's only option left was to show proof that he reapplied for SSI benefits. The Department sent Petitioner a Notice to Apply (DHS-1551) on November 2, 2016 requesting that he provide proof that he applied for SSI by November 12, 2016. Exhibit A, p. 2. But, the evidence established that Petitioner failed to complete/return this form by the due date. In fact, Petitioner acknowledged that he never reapplied for SSI benefits. As such, the Department acted in accordance with Department policy when it closed his FIP benefits because he failed to comply with the verification requirements. See BAM 130 (July 2016), p. 8. (The Department sends a case action notice when: the client indicates refusal to provide a verification, or the time period given has elapsed).

In summary, because Petitioner failed to verify/apply for or appealed his benefits through SSA after claiming a disability lasting longer than 90 days, he did not meet this condition of FIP program eligibility and therefore, the Department properly closed his FIP benefits effective January 1, 2017. BAM 130, p. 8; BAM 815, p. 1; BEM 230A, p. 12; BEM 270, pp. 1-2; and BEM 271, pp. 1-10.

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) the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it decreased Petitioner's FAP benefits for December 1, 2016 to December 31, 2016; and (ii) the Department acted in accordance with Department policy when it closed Petitioner's FIP benefits effective January 1, 2017.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to FIP closure and **REVERSED IN PART** with respect to FAP calculation.


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. Recalculate the FAP budget for December 1, 2016 to December 31, 2016;
2. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from December 1, 2016 to December 31, 2016; and

3. Notify Petitioner of its decision.

IT IS ALSO ORDERED that Petitioner's **MA** hearing request is **DISMISSED**.

EF/tm



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]
[REDACTED]
[REDACTED]

[REDACTED]

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

[REDACTED]

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

CC: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]