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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 7, 2017
MAHS Docket No.: 16-018702
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 February 2, 2017, from Clinton Twp., Michigan. The Petitioner was present at the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Family Independence Specialist.

ISSUES

Did the Department properly provide Petitioner a Bridge card in order to access her Food Assistance Program (FAP) benefits by the 30th day after her application date?

Did the Department properly decrease Petitioner's FAP benefits to [REDACTED] effective January 1, 2017?

Did the Department properly close Petitioner's Healthy Michigan Plan (HMP) – Medical Assistance (MA) coverage effective January 1, 2017?

Did the Department properly process Petitioner's FIP application dated October 21, 2016?

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 October 21, 2016, Petitioner applied for FAP, FIP, and MA benefits. Exhibit C, p. 1.
2. In the application, Petitioner reported her group size is two, her and her eight-year-old grandson.
3. Petitioner alleged that she reported medical barriers that would make it hard for her to go to the Partnership. Accountability.Training.Hope. (PATH) program.
4. On November 14, 2016, Petitioner started the PATH program and the PATH program (Michigan Works!) reported she completed her PATH application eligibility period (AEP) on December 5, 2016.
5. Petitioner was found eligible for the HMP program from October 2016 to December 2016. Exhibit D, p. 6.
6. On November 16, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits were approved effective October 21, 2016, ongoing. Exhibit A, pp. 15-17.
7. On December 2, 2016, the PATH program reported Petitioner was working at Advantage Living Center 24 hours a week or less.
8. The Department could not accurately budget her income with the information provided; thus, a Verification of Employment was issued on December 6, 2016. Exhibit A, pp. 11-12.
9. On December 8, 2016, Petitioner filed a hearing request, protesting the Department's failure to issue her a Bridge card timely and the Department's failure to process her FIP application properly. Exhibit A, pp. 2-3.
10. On December 15, 2016, the Department received verification of her employment, including pay stubs, and she was ineligible for benefits to due to excess income. Exhibit A, pp. 11-14.
11. On December 16, 2016, the Department sent Petitioner a Notice of Case Action notifying her that her Cash Assistance (FIP) application was denied effective December 1, 2016, ongoing, due to excess income. Exhibit B, pp. 1-8
12. On December 16, 2016, the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying her that she was not eligible for HMP - MA coverage due to excess income effective January 1, 2017, ongoing. Exhibit D, pp. 1-5.
13. On December 29, 2016, Petitioner filed another hearing request, requesting an in-person hearing and disputing all of her program case determinations. Exhibit A, p. 26.

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

First, Petitioner filed two separate hearing requests in this case. Regarding the subsequent hearing request dated December 29, 2016, Petitioner argued that the Department failed to restore her program benefits to their former level because she filed a timely hearing request. On December 16, 2016, the Department sent Petitioner a Notice of Case Action and a determination notice that addressed her MA, Cash Assistance, and FAP benefits. Exhibit B, pp. 1-2 and Exhibit D, p. 1. In order for Petitioner to continue receiving her benefits prior to the negative action, the Department must receive the timely hearing request within 10 days of the date of the notice of case action/determination notice, which would have been December 27, 2016. Exhibit B, p. 5; Exhibit D, p. 4; and BAM 600 (October 2016), p. 24. However, the Department has a stamp received date of December 29, 2016, which is after the timely hearing request deadline. Exhibit A, p. 26. As such, the undersigned Administrative Law Judge (ALJ)

finds that Petitioner did not file a timely hearing request by the deadline in order to continue receiving the benefits prior to the negative action date. See BAM 600, p. 24.

Second, Petitioner argued that she filed the two hearings requests to dispute the FAP, FIP, and MA programs only. The undersigned ALJ addresses each program separately below:

FAP benefits

On December 8, 2016, Petitioner filed her first hearing request in which she disputed the Department's failure to issue her a Bridge card in a timely manner. Exhibit A, pp. 2-3. Policy does state that FAP benefits must be available by the seventh day for expedited and the 30th day for regular FAP. BAM 115 (October 2016), p. 16. Available means clients must have a Bridge card and access to their benefits by the seventh day for expedited and the 30th day for regular FAP benefits. BAM 115, p. 16. Petitioner argued that the Department failed to provide her the Bridge card by the 30th day as required by policy. However, Petitioner testified during the hearing that she eventually obtained her Bridge card and had access to all her benefits. Based on this information, Petitioner's FAP issue has been resolved because she eventually received her Bridge card. There is nothing further that the undersigned Administrative Law Judge (ALJ) can address in regards to her Bridge card. As such, Petitioner's FAP hearing request as it relates to her Bridge card is DISMISSED.

On December 29, 2016, Petitioner filed another hearing request in which she again disputed her FAP benefits. Exhibit A, p. 26. It was discovered that on December 16, 2016, the Department sent Petitioner another Notice of Case Action notifying her that her FAP benefits decreased to [REDACTED] effective January 1, 2017. Exhibit B, pp. 1-8. Petitioner did not dispute the decrease in her benefits. As such, the undersigned ALJ finds that the Department properly decreased Petitioner's FAP benefits in accordance with Department policy.

HMP and other MA categories

In the present case, Petitioner was found to be eligible for HMP coverage from October 2016 to December 2016, but then her benefits closed effective January 1, 2017, due to excess income. Exhibit D, pp. 1-6. The determination notice indicated that Petitioner's annual income of [REDACTED] exceeded the HMP income limit of [REDACTED] for a household size of one. The undersigned ALJ had issues with the HMP denial as shown below.

First, the Department failed to provide sufficient evidence or testimony showing how it determined her annual income is [REDACTED]. Exhibit D, p. 2. Furthermore, Petitioner's might be eligible for HMP benefits based on a household size of two. The Department determined that Petitioner's household size was one for Modified Adjusted Gross Income (MAGI) purposes. However, Petitioner testified that her household size

includes her grandson and she testified that she plans to claim him on his tax return. This means that her household composition for MAGI related eligibility might be two, which increases the HMP income limit to [REDACTED] Exhibit D, p. 2.

The Healthy Michigan Plan (HMP) provides health care coverage for individuals who:

- Are 19-64 years of age
- Do not qualify for or are not enrolled in Medicare
- Do not qualify for or are not enrolled in other Medicaid programs
- Are not pregnant at the time of application
- Meet Michigan residency requirements
- Meet Medicaid citizenship requirements
- Have income at or below 133 percent Federal Poverty Level (FPL) Cost Sharing.

BEM 137 (October 2016), p. 1.

The size of the household will be determined by the principles of tax dependency in the majority of cases. MAGI Related Eligibility Manual, *Michigan Department of Community Health* (DCH), May 2014, p. 14. Available at http://michigan.gov/documents/mdch/MAGI_Manual_457706_7.pdf.

The Department manual differentiates between tax filers and non-tax filers. The household for a tax filer, who is not claimed as a tax dependent, consists of: (i) individual; (ii) individual's spouse; and (iii) tax dependents. MAGI Related Eligibility Manual, p. 14.

Furthermore, 42 CFR 435.603(f)(1), basic rule for taxpayers not claimed as a tax dependent states the following:

In the case of an individual who expects to file a tax return for the taxable year in which an initial determination or renewal of eligibility is being made, and who does not expect to be claimed as a tax dependent by another taxpayer, the household consists of the taxpayer and, subject to paragraph (f)(5) of this section, all persons whom such individual expects to claim as a tax dependent

Based on the above information, the policy manuals and federal regulations indicates a determination of the household composition is based on what Petitioner expects to file. Petitioner credibly testified that she plans to claim her grandson as a dependent for her 2016 tax return, which results in a household composition of two. See MAGI Related Eligibility Manual, p. 14 and 42 CFR 435.603(f)(1) – (f)(5).

Based on the foregoing information and evidence, the undersigned ALJ finds that the Department failed to satisfy its burden of showing that it properly closed Petitioner's HMP coverage effective January 1, 2017. As stated above, the Department failed to

provide sufficient evidence or testimony showing how it determined her annual income is [REDACTED]. Moreover, the undersigned ALJ concluded that the Department improperly determined Petitioner's household composition for HMP purposes. Accordingly, the Department will redetermine Petitioner's HMP eligibility, including household composition, for January 1, 2017, ongoing.

It should be noted that even if Petitioner is not found eligible for HMP coverage, there are other MA programs available to her. The determination notice also stated that she was not found eligible for MA benefits because she is not a caretaker of someone under the age of 19. Exhibit D, p. 2. However, this is incorrect. Petitioner is the caretaker of her grandson who is under the age of 19. MA is available to parents and other caretaker relatives who meet the eligibility factors for Group 2 Caretaker Relatives (G2C) – MA coverage. See BEM 135 (October 2015), pp. 1-7. As such, if Petitioner is not eligible for the HMP coverage, the Department must determine if she is eligible for other MA categories in accordance with Department policy. See BEM 105 (October 2016), p. 5 (ex-parte review).

FIP application

In regards to Petitioner's FIP application, she had several issues with the Department's processing of her application.

Petitioner first argued that she had medical problems in which she should have been deferred from attending the PATH program. Petitioner testified that she identified these barriers in the application and provided the Department with a copy her Social Security application, but the Department failed to act on them. The Department was unaware of these claims.

Clients must complete a 21 day PATH application eligibility period (AEP) as part of orientation which 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 DHS-4785, PATH Appointment Notice; complete PATH AEP requirements; and continue to participate in PATH after completion of the 21 day AEP. BEM 229, p. 1. The Department denies the FIP application if an applicant does not complete all of the above three components of the AEP. BEM 229, p. 1.

At application, the registration support staff must provide clients with a DHS-619, Jobs and Self-Sufficiency Survey. BEM 229, p. 1. Specialists must do all of the following:

* * *

- Temporarily defer an applicant who has identified barriers that require further assessment or verification before a decision about a lengthier deferral is made, such as clients with serious medical problems or disabilities or clients caring for a spouse or child with disabilities.

- Note: Clients should not be referred to orientation and AEP until it is certain that barriers to participation such as lack of child care or transportation have been removed, possible reasons for deferral have been assessed and considered, and disabilities have been accommodated.

BEM 229, pp. 1-2.

Based on the foregoing information and evidence, the undersigned ALJ finds that the Department did not properly process Petitioner's FIP application dated October 21, 2016. Petitioner credibly testified that she notified the Department of her medical barriers in her application and that the Department should not have referred her to orientation and AEP until these barriers have been addressed. See BEM 229, pp. 1-2. Because the Department improperly referred Petitioner to the PATH orientation, the Department did not process her FIP application in accordance with Department policy. See BEM 229, pp. 1-2. The Department will initiate re-registration and reprocessing of Petitioner's Cash Assistance (FIP) application dated October 21, 2016, and determine if she should be deferred from PATH participation.

Additionally, Petitioner had other issues with the processing of her FIP application, including the Department's failure to refer her to the PATH program timely. See BAM 115, p. 15 (Upon immediate receipt of the FIP application, the specialist must run the FIP Eligibility Determination Group (EDG) in Bridges to timely generate an automated Partnership. Accountability. Training. Hope. (PATH) referral, as well as the DHS-4785, PATH Appointment Notice, to the client. While the specialist should run the FIP EDG immediately, this must be completed within five days of the application date). However, the undersigned ALJ already concluded above that the Department already did not process her FIP application properly and ordered the Department to reprocess the application. Therefore, the undersigned ALJ will not address her additional concerns with the processing of the application.

Furthermore, the Department ultimately denied her FIP application effective December 1, 2016, due to excess income. Again, though, the undersigned ALJ will not address this denial reason because the undersigned ALJ ultimately concluded the application itself was not properly processed. Now, Petitioner might only be eligible for FIP benefits in the pay period her application becomes 30-days old, which was from November 16, 2016 to November 30, 2016, and not eligible from December 1, 2016, ongoing, due to excess income. See BAM 400 (October 2015), pp. 1-7; and BAM 115, p. 25 (provided the group meets all eligibility requirements, begin assistance in the pay period in which the application becomes 30 days old). However, the Department will make its determination if she is income eligible for FIP benefits when it is reprocessing the application.

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) Petitioner's FAP hearing request dated December 8, 2016, as it relates to her Bridge card, is dismissed; (ii) the Department acted in accordance with Department policy when it decreased Petitioner's FAP benefits to [REDACTED] effective January 1, 2017; (iii) the Department did not act in accordance with Department policy when it improperly closed Petitioner's HMP coverage effective January 1, 2017; and (iv) the Department did not act in accordance with Department policy when it improperly processed Petitioner's Cash Assistance (FIP) application dated October 21, 2016.


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

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. Initiate re-registration and reprocessing of Petitioner's Cash Assistance (FIP) application dated October 21, 2016;
2. Determine if Petitioner should be deferred from PATH participation due to any identified medical barriers;
3. Issue supplements to Petitioner for any FIP benefits she was eligible to receive but did not;
4. Redetermine Petitioner's HMP – MA eligibility, including household composition, effective January 1, 2017;
5. If Petitioner is not eligible for HMP coverage, redetermine Petitioner's eligibility for all other MA categories effective January 1, 2017;
6. Issue supplements to Petitioner for any MA benefits she was eligible to receive but did not from January 1, 2017, ongoing; and

7. Notify Petitioner of its decision.

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

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