



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: February 21, 2017
MAHS Docket No.: 17-000621
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 February 15, 2017, from Lansing, Michigan. Petitioner appeared and represented himself. [REDACTED] Eligibility Specialist, and [REDACTED] Family Independence Manager, appeared on behalf of the Department of Health and Human Services (Department).

The Department offered the following exhibits which were marked and admitted into evidence: [**Department's Exhibit 1**: Verification Checklist dated 11/9/16 (pages 1-2), Verification Checklist dated 11/10/16 (pages 3-4), Bridges Appointment Details (pages 5-6), Notice of Case Action dated 12/9/16 (pages 7-11), Health Care Coverage Determination Notice dated 12/9/16 (pages 12-15), Request for Hearing received 1/9/17 (pages 16-17), Verification Checklist dated 11/9/16 (page 18), Notice of Missed Interview dated 11/15/16 (page 19), Health Care Coverage Determination Notice dated 12/9/16 (page 20-21), Notice of Case Action dated 12/9/16 (pages 22-24), and Pre-Hearing Conference dated 1/10/17 (page 25).].

Petitioner did not offer any exhibits into evidence.

The record closed at the conclusion of the hearing.

ISSUE

Did the Department properly deny Petitioner's application for Food Assistance Program (FAP) benefits due to failure to comply with the interview requirements?

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 applied for FAP, Medical Assistance (MA), and cash assistance on November 9, 2016. [Hearing Testimony].
2. The Department did not mail Petitioner any notice concerning a telephone interview. [Hrg. Test.].
3. On November 9, 2016, the Department mailed Petitioner a Verification Checklist, which requested income verification for MA, which was due by November 21, 2016. [Department's Exhibit 1, pp. 1-2].
4. On November 10, 2016, the Department mailed Petitioner a Verification Checklist, which requested heat expense, home rent and non-heat electric expense verifications by November 21, 2016. [Dept. Exh. 1, pp. 3-4].
5. The Department scheduled Petitioner's telephone appointment for November 15, 2016, at 9:30 a.m., but the Department did not notify Petitioner that he had an appointment. [Dept. Exh. 1, p. 5].
6. Petitioner missed the telephone interview on November 15, 2016. [Dept. Exh. 1, p. 5].
7. On November 15, 2016, the Department mailed Petitioner a Notice of Missed Interview. [Dept. Exh. 1, p. 19].
8. Petitioner attempted to contact the Department on multiple occasions concerning the pending verifications and other issues, but the Department failed to communicate with him. [Hrg. Test.].
9. On December 9, 2016, the Department mailed Petitioner a Notice of Case Action, which denied Petitioner's FAP application effective November 9, 2016, because he failed to complete the interview requirement. [Dept. Exh. 1, pp. 7-11].
10. On January 9, 2017, the Department received Petitioner's request for hearing concerning FAP benefits.¹ [Dept. Exh. 1, pp. 16-17].

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

¹ Petitioner did not indicate that he wanted a hearing concerning MA, FIP (Cash), or any other program other than FAP. [See Request for Hearing, Dept. Exh. 1, p. 17].

Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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.

Department policy sometimes requires the Department conduct an interview with an applicant for benefits. The purpose of the interview is to explain program requirements to the applicant and to gather information for determining the group's eligibility. BAM 115 (1-1-2017), p. 16.

The interview is an official and confidential discussion. Its scope must be limited to both of the following:

- Collecting information and examining the circumstances directly related to determining the group's eligibility and benefits.
- Offering information on programs and services available through MDHHS or other agencies.

The person interviewed may be any responsible group member **or** AR. BAM 115, p. 16.

The Department **must** do the following during the interview:

- State the client's rights and responsibilities; see BAM 105.
- Review and update the application.
- Help complete application items **not** completed when it was filed.
- Resolve any unclear or inconsistent information. See BAM 115, pp. 16-17. [Emphasis added].

For FAP, an interview is required before denying assistance even if it is clear from the application or other sources that the group is ineligible. BAM 115, p. 18. [Emphasis added]. The Department cannot deny the application if the client has not participated in a **scheduled** initial interview until the 30th day after the application date **even** if he/she has returned all verifications. BAM 115, p. 18. [Emphasis added].

Policy requires the Department conduct a telephone interview at application before approving benefits. However, the Department must conduct an in-person interview if one of the following exists:

- The client requests one.
- The specialist determines it is appropriate. For example, it is suspected information in the application is fraudulent.

Exception: Do not require an in-office interview if the client is experiencing a hardship which prevents an in-office interview. Instead, conduct the in-person interview at the client's home or another agreed-upon location. Hardship conditions include but are not limited to: illness, transportation difficulties, work hours, etc. See BAM 115, p. 20.

Policy requires the Department schedule interviews in Bridges promptly to meet the standard of promptness. For **FAP only** schedule the interview as a telephone appointment **unless** specific policy directs otherwise. The interview must be held by the **20th** day after the application date to allow the client at least 10 days to provide verifications by the 30th day. BAM 115, p. 22. [Emphasis in original].

In the instant matter, Petitioner requested a hearing because the Department denied his November 9, 2016, application for FAP benefits. Specifically, Petitioner contends that he turned in all requested paperwork, but his caseworker failed to return his messages. The Department did not dispute Petitioner's contentions and offered to re-register and reprocess Petitioner's November 9, 2016, application. Petitioner was very frustrated and was not pleased with the way the Department has treated him.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. Initially, the record did not contain any evidence that Petitioner failed to return any requested verifications. Accordingly, the Department did not establish that Petitioner's application was properly denied due to failure to provide requested verifications. However, the primary issue concerns whether the application was properly denied based on failure to attend an interview.

In the instant matter, the Department Eligibility Specialist admitted that she failed to provide Petitioner with notice that he had an interview scheduled for November 15, 2016. BAM 115, p. 18, prohibits the Department from denying a FAP application after an applicant fails to attend a scheduled interview until after the 30th day after the application. . ." This language, either expressly or by implication, requires the Department schedule the interview before denying an application for FAP benefits. In order to conduct an interview, the Department must first notify the applicant that an interview has been scheduled. Here, the Department did not provide any evidence in this record that it provided Petitioner with notice that he had an interview on November 15, 2016, as required by BAM 115. As a result, the Notice of Missed Interview was automatically generated by the Bridges system despite the fact that Petitioner was not afforded a reasonable opportunity to attend or participate in the interview. The

Department concedes that it failed to follow policy and that Petitioner's FAP application should not have been denied in this matter. Accordingly, the Department has offered to re-register and reprocess Petitioner's November 9, 2016, application for FAP benefits.

During the hearing, although he was frustrated with the Department, Petitioner did accept the Department's offer to resolve this matter. As a result, there is no longer an active dispute concerning Petitioner's FAP benefits for the Administrative Law Judge to decide.

Because clients have the right to contest a department decision affecting eligibility or benefit levels whenever they believe a decision is incorrect, the Department provides an administrative hearing to review the decision and determine its appropriateness in accordance to policy. BAM 600 (10-1-2016), p. 1.

The Administrative Law Judge determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether MDHHS policy was appropriately applied. BAM 600, p. 38. [Emphasis added]. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals. See Delegation of Hearing Authority, August 9, 2002, per PA 1939, Section 9, Act 280. Furthermore, established Michigan case law provides that administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co, v Baker*, 295 Mich 237; 294 NW 168 (1940).

Although Petitioner is upset about the way he believes the Department has treated him and his application, this Administrative Law Judge lacks the authority to impose sanctions or discipline individual Department employees for alleged misconduct. However, this Administrative Law Judge does have the ability to review the Department's actions and determine whether the Department followed policy. See BAM 600, p. 38.

The Department has fallen on its sword and has offered to provide Petitioner with the relief that he requested concerning his application for FAP benefits. Based on the above, this Administrative Law Judge cannot provide Petitioner with any additional relief.

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 the Department did not act in accordance with Department policy when it denied Petitioner's application for FAP benefits based on failure to attend an interview.

DECISION AND ORDER


Accordingly, the Department's decision is **REVERSED**.

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. Re-register and reprocess Petitioner's November 9, 2016, application for FAP benefits.
2. Comply with and follow all applicable policies concerning the reprocessing and re-registering of Petitioner's November 9, 2016, FAP application including, but not limited to, properly scheduling an interview and obtaining all necessary verifications.
3. Provide Petitioner with written communication regarding the outcome following the reprocessing of his November 9, 2016, FAP application.
4. To the extent required by policy, the Department shall provide Petitioner with retroactive and/or supplemental FAP benefits.

IT IS SO ORDERED.

CAP/mc



C. Adam Purnell
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]

Petitioner

[REDACTED]