



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: March 17, 2017
MAHS Docket No.: 17-001984
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 March 9, 2017, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], manager, and [REDACTED], specialist.

ISSUE

The 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 benefit recipient.
2. On [REDACTED], MDHHS terminated Petitioner's FAP eligibility, effective November 2016, based on Petitioner allegedly having multiple drug felonies.
3. Petitioner did not have multiple drug felonies.
4. On an unspecified date in November 2016, Petitioner verbally requested a hearing to dispute the FAP benefit termination.

5. On [REDACTED], Petitioner requested a hearing, in writing, to dispute the FAP benefit termination (see Exhibit 1, p. 3).

CONCLUSIONS OF LAW

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 to dispute a termination of FAP eligibility. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 1-2) dated [REDACTED]. The stated reason for termination was Petitioner having multiple drug felonies since August 22, 1996. Before an analysis of whether the benefit termination was proper, a procedural matter must be addressed.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (October 2016), p. 6. The request must be received in the local office within the 90 days. *Id.*

MDHHS received a hearing request from Petitioner on [REDACTED]. The date of hearing request submission was more than 90 days after MDHHS issued notice of the action in dispute. Petitioner presented evidence of an earlier hearing request.

Requests for a hearing must be made in writing and signed by... [a client or authorized hearing representative]. *Id.*, p. 2. [An exception is] for Food Assistance Program (FAP) only, a hearing request may be written or oral. *Id.*

Petitioner testified she called an MDHHS specialist several times in the 90 days that followed her receipt of notice of FAP benefit termination. Petitioner testified that on approximately 4-5 occasions, she left a voicemail for her specialist and requested a hearing. Petitioner also testified that she submitted a separate written request for hearing on an unspecified date within the 90 days of the Notice of Case Action mailing. A MDHHS specialist testified that she could not recall any voicemail messages from Petitioner in the past few months.

As it happened, it was not disputed that Petitioner had more than one MDHHS specialist during the time her FAP eligibility ended. Petitioner could not recall which MDHHS specialist she called; thus, it is theoretically possible that presented testimony from Petitioner and the MDHHS specialist was accurate.

Petitioner did not present phone records verifying her calls to MDHHS. MDHHS did not present phone records verifying the absence of calls from Petitioner. Considering only the statements from each side, it is difficult to determine whether Petitioner verbally requested a hearing. The best evidence came from Petitioner's hearing request.

Petitioner's hearing request stated she previously called her worker shortly after receiving notice of the termination to state that she "wanted an appeal" of the FAP benefit termination. The back of the hearing request (which was not presented) was not disputed to include further details of Petitioner's communications with MDHHS which allegedly involved other verbal requests for hearing.

It is assumed that Petitioner was unaware of the MDHHS policies on hearing request deadlines when she submitted her hearing request in January 2017. If the assumption is correct, Petitioner would not have much incentive to cite a previous hearing request unless it was true.

Petitioner's hearing request statement is not definitive evidence that Petitioner timely requested a hearing to dispute FAP termination. It was, however, the best evidence presented in determining whether Petitioner timely requested a hearing.

It is found that Petitioner timely requested a hearing from MDHHS to dispute FAP eligibility from November 2016. Thus, the analysis may proceed to consider whether MDHHS properly terminated Petitioner's FAP eligibility based on Petitioner's criminal history.

[For FAP benefits,] people convicted of certain crimes and probation or parole violators are not eligible for assistance. BEM 203 (July 2013), p. 1. An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. *Id.*, p. 2.

It was not disputed that Petitioner reported to MDHHS having a drug history. Petitioner apparently reported uncertainty as to whether she had multiple drug felonies since 1996. MDHHS testimony indicated an investigation found that Petitioner had multiple drug felonies since 1996. MDHHS testimony conceded that the investigation finding was erroneous and that Petitioner did not have multiple drug felonies since August 22, 1996. Based on the MDHHS concession, there was no basis for terminating Petitioner's FAP eligibility. It is found that MDHHS improperly terminated Petitioner's FAP eligibility beginning November 2016.

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 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 FAP eligibility, effective November 2016, subject to the finding that Petitioner did not have multiple drug-related felonies; and
- (2) Initiate a supplement for 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

DHHS

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]