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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

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Date Mailed: May 4, 2017
MAHS Docket Nos.: 17-004311; 17-004312
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, a three-way telephone hearing was held on ██████████, from Detroit, Michigan. Petitioner was present for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by ██████████, Hearings Facilitator. Also, ██████████, Lead Child Support Specialist, participated via telephone from the Office of Child Support ("OCS").

ISSUES

1. Did the Department properly disqualify Petitioner from her Food Assistance Program (FAP) benefits due to her failure to establish paternity and/or obtain child support?
2. Did the Department properly close Petitioner's Medical Assistance (MA) benefits effective ██████████?

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 benefits.
2. Petitioner was an ongoing recipient of MA benefits.
3. Petitioner gave birth to her child on ██████████.

4. Petitioner received Pregnant Women (PW) Medicaid coverage until [REDACTED].
5. On [REDACTED], the OCS sent Petitioner a First Customer Contact Letter.
6. On [REDACTED], Petitioner contacted the OCS absent the absent parent, but the OCS determined that she was unable to identify the absent parent.
7. On [REDACTED], the OCS sent Petitioner a Final Customer Contact Letter.
8. Petitioner failed to respond to the final contact letter.
9. On [REDACTED], the OCS sent Petitioner a Noncooperation Notice.
10. Effective [REDACTED], Petitioner was in non-cooperation with the OCS because she failed to identify the absent parent for Child A (name intentionally removed). Exhibit A, p. 4.
11. On [REDACTED], Petitioner submitted her online Redetermination. Exhibit B, pp. 12-19.
12. On [REDACTED], an Unearned Income Notice was sent to Petitioner requesting that she provide proof of her unearned income received from a bank account and her unemployment compensation.
13. On [REDACTED], the Department sent Petitioner a Verification Checklist (VCL), which requested verification of an Unearned Income Notice sent to her on [REDACTED]; wages; and other request verifications. The verifications were due back by [REDACTED]. Exhibit B, pp. 20-22.
14. Per the credible testimony of Petitioner, she provided proof of her bank account from the Unearned Income Notice and that she requested assistance to the Department for the unemployment compensation, but received no assistance.
15. On [REDACTED], and [REDACTED], the Department received Verification of Employments forms, which indicated her annual salary was \$ [REDACTED]. Exhibit B, pp. 23-26.
16. Petitioner is [REDACTED] years old; she is not disabled; her group size is two (Petitioner and child); and she plans to file a tax return for two individuals (child to be claimed as dependent).
17. According to the employment verifications, Petitioner's income exceeds the income limit for a group size of 2 causing the medical benefits to close. Exhibit B, p. 1.
18. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits would decrease to \$ [REDACTED] for a group size of one effective [REDACTED], and disqualified Petitioner from the FAP program due to her failure to cooperate with the OCS. Exhibit A, pp. 5-8.

19. On [REDACTED], the Department sent Petitioner a Health Care Coverage Determination Notice (determination notice) notifying her that her MA benefits would close effective [REDACTED], ongoing. Exhibit B, pp. 27-31.
20. The Department did not consider Petitioner's eligibility for Group 2 Caretaker Relatives (G2C) (with a deductible) because she failed to provide requested proof of the income that was reported on the Unearned Income Notice sent to her on [REDACTED]. Exhibit B, p. 1.
21. On [REDACTED], Petitioner filed a hearing request, protesting her FAP benefits. Exhibit A, pp. 3-4.
22. On [REDACTED], Petitioner filed a hearing request, protesting her MA benefits. Exhibit B, pp. 2-3.

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 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 matters

On [REDACTED], Petitioner filed two separate hearing requests, one disputing her FAP benefits (Reg. No. 17-004312), and the other hearing request disputing her MA benefits (Reg. No. 17-004311). Exhibit A, pp. 3-4, and Exhibit B, pp. 2-3. As a result of both hearing requests, the undersigned Administrative Law Judge (ALJ) consolidated both hearing requests into one hearing; and the undersigned will issue this one hearing decision to address both issues. Neither party objected. Documents marked as "Exhibit A" addresses Petitioner's FAP benefits and documents marked as "Exhibit B"

addresses Petitioner's MA benefits. Finally, based on the Petitioner's hearing request and testimony, she is disputing the following: (i) Petitioner's disqualification from the FAP program due to her failure to cooperate with the OCS effective [REDACTED]; and (ii) the closure of her MA benefits effective [REDACTED]. Exhibit A, pp. 2-3. The undersigned will address each issue separately below:

FAP benefits

Families are strengthened when children's needs are met. BEM 255 (January 2017), p. 1. Parents have a responsibility to meet their children's needs by providing support and/or cooperating with the department, including the Office of Child Support (OCS), the Friend of the Court (FOC) and the prosecuting attorney to establish paternity and/or obtain support from an absent parent. BEM 255, p. 1.

The custodial parent or alternative caretaker of children must comply with all requests for action or information needed to establish paternity and/or obtain child support on behalf of children for whom they receive assistance, unless a claim of good cause for not cooperating has been granted or is pending. BEM 255, p. 1.

Failure to cooperate without good cause results in disqualification. BEM 255, p. 2, and pp. 2-7, (good cause policy). Disqualification includes member removal, as well as denial or closure of program benefits, depending on the type of assistance (TOA). BEM 255, p. 2.

Cooperation is a condition of eligibility. BEM 255, p. 9. Cooperation is required in all phases of the process to establish paternity and obtain support. BEM 255, p. 9. It includes all of the following:

- Contacting the support specialist when requested.
- Providing all known information about the absent parent.
- Appearing at the office of the prosecuting attorney when requested.
- Taking any actions needed to establish paternity and obtain child support (including but not limited to testifying at hearings or obtaining genetic tests).

BEM 255, p. 9.

For FAP cases, failure to cooperate without good cause results in disqualification of the individual who failed to cooperate. BEM 255, p. 14. The individual and her needs are removed from the FAP Eligibility Determination Group (EDG) for a minimum of one month. BEM 255, p. 14. The remaining eligible group members will receive benefits. BEM 255, p. 14.

In the present case, the OCS caseworker testified that Petitioner contacted OCS regarding the absent parent on [REDACTED], (twice), but she failed to provide identifying information about the absent parent. Thus, the OCS caseworker testified that Petitioner remains in non-cooperation with the OCS.

In response, Petitioner argued that she has attempted to provide OCS with all known information about the absent parent.

Based on the foregoing information and evidence, the Department improperly disqualified Petitioner from her FAP benefits. The Department/OCS argues that Petitioner has failed to provide the identifying information about the absent parent. However, Petitioner argued that she has attempted to provide OCS with all known information about the absent parent. The undersigned agrees with the Petitioner's argument. Despite Petitioner's inability to provide identifying information about the absent parent, i.e., his name, the undersigned finds that Petitioner did attempt to provide all the information she knew about the absent parent when she contacted the OCS on [REDACTED]. BEM 255 states that cooperation is a condition of eligibility, which includes contacting the support specialist when requested and providing all known information about the absent parent. BEM 255, p. 9. In the present case, Petitioner cooperated with the OCS because she contacted the OCS specialist and provided all known information about the absent parent. Because the evidence establishes that Petitioner has contacted OCS when requested and providing all known information about the absent parent, the Department improperly disqualified her from her FAP benefits effective [REDACTED]. See BEM 255, pp. 1-14.

MA benefits

In the present case, Petitioner also disputed the closure of her MA benefits effective [REDACTED]. Petitioner gave birth to her child on January 14, 2017; and she received PW Medicaid coverage at the time. However, her PW Medicaid coverage ended [REDACTED], because this form of coverage is only available during the two calendar months following the month her pregnancy ended regardless of the reason (for example, live birth, miscarriage, stillborn). See BEM 125 (July 2016), p. 1.

Additionally once her PW Medicaid coverage ended, she was also in the redetermination process for her ongoing MA eligibility. On [REDACTED], and [REDACTED], the Department received Verification of Employment forms, which indicated her annual salary was \$ [REDACTED]. Exhibit B, pp. 23-26. According to the employment verifications, Petitioner's income exceeds the income limit for a group size of two causing the medical benefits to close; and the Department issued the Determination Notice dated [REDACTED]. Exhibit B, pp. 1 and 27-31. The Determination Notice stated that she was ineligible for parents and caretaker coverage and the Healthy Michigan Plan (HMP) due to excess income. Exhibit B, p. 18. The undersigned does not dispute that Petitioner is not eligible for HMP coverage because her annual income of \$ [REDACTED] far exceeds the income limit of \$ [REDACTED] for HMP benefits for a group size of two. See Exhibit B, pp. 28-29, and BEM 137 (October 2016), p. 1, (HMP provides health care coverage for individuals who have income at or below 133% of the Federal Poverty Level (FPL)). However, the undersigned issue for this hearing was if the Department conducted a proper ex parte review of Petitioner's eligibility for other MA categories, such as G2C, because she is the parent of a minor.

The Department testified that it did not consider Petitioner's eligibility for G2C (with a deductible) because she failed to provide requested proof of the income that was reported on the Unearned Income Notice sent to her on [REDACTED]. Exhibit B, p. 1. A VCL was sent to Petitioner on [REDACTED], which requested verification of an Unearned Income Notice sent to her on [REDACTED]; and it was due back by March 13, 2017. Exhibit B, pp. 20-22. Neither party provided a copy of the Unearned Income Notice. Petitioner testified the Unearned Income Notice requested that she provide proof of her funds she received for opening up a bank account and her unemployment compensation. She testified that she faxed verification of her bank account to the Department before the due date on [REDACTED]. However, she testified that she contacted her caseworker before the due date requesting assistance as to the type of verification needed for the unemployment compensation; but she received no assistance.

In response, the Department reviewed its system (the Electronic Case File) and did not find any verification of her bank account or the unemployment compensation. The Department indicated that Petitioner's Case Comments-Summary showed contact and/or documentation with Petitioner on [REDACTED].

An ex parte review (see glossary) is required before Medicaid closures when there is an actual or anticipated change, unless the change would result in closure due to ineligibility for all Medicaid. BEM 105 (October 2016), p. 5. When possible, an ex parte review should begin at least 90 days before the anticipated change is expected to result in case closure. BEM 105, p. 5. The review includes consideration of all MA categories. BEM 105, p. 5, and see BAM 210 (January 2017), p. 2, (redetermination/ex parte review).

DHS (now known as "MDHHS") is required to match income information reported by third parties to IRS for all Family Independence Program (FIP), MA and FAP recipients. BAM 803 (January 2015), p. 1. The data is compared to earned and unearned income for the recipient. BAM 803, p. 1. This occurs at application and prior to each redetermination. BAM 803, p. 1.

The IRS Unearned Income Match compares MDHHS recipient data with unearned income reported to IRS from sources such as bank account interest, lottery winnings and government subsidies. BAM 803, p. 2. When the data exchange results in a recipient match, the client is sent a DHS-4487A, Unearned Income Notice, for applicants and DHS-4487 for active recipients. BAM 803, p. 2. The DHS-4487 is mailed during the month prior to the redetermination month for active recipients when a match is found with IRS. BAM 803, p. 2. Specialists are sent a task/reminder which identifies the client who received notices. BAM 803, p. 2.

One notice is sent which includes each source of income that is reported for the recipient. BAM 803, p. 3. Each notice contains several information as indicated in BAM 803, p. 3. The number of pages mailed to the group is shown at the top of each notice (such as page 1 of 3). The notice also informs the client that failure to provide the required information may result in benefit denial, reduction or closure. BAM 803, p. 3.

There is also policy in BAM 803 on how the specialist processes the IRS matches from Steps 1 to 5. See BAM 803, pp. 3-4. For step 5, policy states the client must verify the information on the notice. BAM 803, p. 4. If the client cannot verify the notice information, have the client enter the name and address of the third party source and sign a DHS-20, Verification of Assets, to allow for release of information from the institution listed on the notice. BAM 803, p. 4. If the client refuses to verify the information, use appropriate BEM and BAM procedures to deny or close the case or reduce benefits. BAM 803, p. 4.

Information on IRS match notices is unverified. BAM 803, p. 4. Do not take a negative action based solely on that information. BAM 803, p. 4. Seek verifications from the client or third party which establish factors such as the following:

- Time period involved.
- The asset that generated the income.
- Whether the asset and/or income was available to the client.

BAM 803, p. 4. When verification is unavailable to both you and the client, use the best available information to determine current eligibility and document in the case record. BAM 803, p. 4. Once verification is received, use appropriate BEM and BAM processing procedures to determine past and current eligibility, benefit denial/closure/reduction. BAM 803, p. 4.

Finally, policy states clients must take actions within their ability to obtain verifications. BAM 105 (October 2016), p. 13. MDHHS staff must assist when necessary. BAM 105, p. 13. The local office must assist clients who ask for help in completing forms, gathering verifications, and/or understanding written correspondence sent from the department. BAM 105, p. 15.

Based on the foregoing information and evidence, the undersigned finds that Department improperly closed Petitioner's MA benefits effective [REDACTED], ongoing, in accordance with Department policy. The undersigned does not dispute that Petitioner is ineligible for HMP benefits due to excess income. However, the redetermination process includes the Department conducted an ex parte review to determine if Petitioner is eligible for other MA categories, such as G2C. MA is available to parents and other caretaker relatives who meet the eligibility factors in BEM 135. BEM 135 (October 2015), p. 1. Petitioner might be eligible for G2C because she is a parent of a minor, but based on her income, her MA coverage might be subject to a deductible. See BEM 135, p. 2. However, the Department argued that it did not conduct her eligibility for G2C because she failed to provide requested proof of the income that was reported on the Unearned Income Notice sent to her on [REDACTED] Exhibit B, p. 1. The undersigned disagrees. The Unearned Income Notice requested verification of the fund she received for opening a bank account and her unemployment compensation. The undersigned finds Petitioner's testimony credible that she provided verification of her bank account before the [REDACTED], due date and that she sought assistance from her caseworker on how to proceed with the

unemployment compensation verification, but received no help. Petitioner's credibility is supported by the fact that she did provide verification of her employment wages to the Department, which, to the undersigned, shows that she was making attempts to provide the necessary verifications. As such, Petitioner credibly established that she asked her caseworker for assistance with the verification requested and never received such help. Thus, the Department improperly closed Petitioner's MA benefits effective [REDACTED], in accordance with Department policy. See BAM 105, p. 15, and BAM 210, p. 2. Now, the undersigned is not stating one way or another that Petitioner is eligible. Policy requires that an ex parte review be done prior to case closure. The Department will conduct an ex parte review to determine if Petitioner is eligible for other MA categories effective [REDACTED], such as G2C, in accordance with Department policy. See BEM 105, p. 5, and BAM 210, p. 2.

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 (i) that the Department did not act in accordance with Department policy when it improperly disqualified Petitioner from her FAP benefits effective [REDACTED]; and (ii) the Department did not act in accordance with Department policy when it improperly closed Petitioner's MA benefits effective [REDACTED].

Accordingly, the Department's FAP and MA decisions are **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. Remove any noncooperation sanction imposed by the Office of Child Support back to the date Petitioner was last found to be in "non-cooperation", which is [REDACTED];
2. Remove Petitioner's FAP disqualification effective [REDACTED], ongoing;
3. Recalculate the FAP budget for [REDACTED], ongoing;
4. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED], ongoing;
5. Reinstate Petitioner's MA benefits effective [REDACTED];
6. Redetermine Petitioner's MA eligibility effective [REDACTED];
7. Issue supplements to Petitioner for any MA benefits she was eligible to receive but did not from [REDACTED], ongoing; and

8. Notify Petitioner of its decisions.

EJF/jaf



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

Department Representative

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]

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