



RICK SNYDER  
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: May 11, 2017  
MAHS Docket No.: 17-004663  
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, a three-way telephone hearing was held on May 8, 2017, from Lansing, Michigan. Petitioner was present for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED]. Also, [REDACTED], [REDACTED], participated via telephone from the [REDACTED].

### **ISSUES**

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?

Did the Department properly close Petitioner's FAP benefits effective February 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. On May 8, 2016, the OCS sent Petitioner a First Customer Contact Letter.
2. Petitioner failed to respond to the first contact letter.
3. On May 18, 2016, the OCS sent Petitioner a Final Customer Contact Letter.
4. Petitioner failed to respond to the final contact letter.

5. On May 26, 2016, the OCS sent Petitioner a Noncooperation Notice.
6. Effective May 26, 2016, Petitioner was in non-cooperation with the OCS because she failed to respond to the contact letters for Child A, Child B, Child C, and Child D (children's name intentionally removed). [Exhibit A, p. 13.]
7. In mid-December 2016, Petitioner applied for FAP benefits.
8. On January 6, 2017, the Department sent Petitioner a Verification Checklist (VCL) requesting proof of other self-employment and proof of all her earned and unearned income. The Department also sent Petitioner a Self-Employment Income and Expense Statement for the months of November and December. All the verifications were due back by January 17, 2017. [Exhibit A, pp. 28-31.]
9. The Department indicated that it did not receive the requested verifications by the due date.
10. On January 30, 2017, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits would close effective February 1, 2017, ongoing because she failed to cooperate with OCS and verification of self-employments were not returned for a group member and OCS compliance verifications were not returned. [Exhibit A, pp. 8-11.]
11. On February 15, 2017, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits were approved for January 1, 2017 to January 31, 2017 in the amount of [REDACTED] for a group size of five; and in the "Comments From Your Specialist About This Notice" stated that in early January 2017, a Notice of Case Action was not mailed to her and the Department is now sending her this notice. [Exhibit A, pp. 15-17.]
12. On March 13, 2017, Petitioner reapplied for FAP benefits and was still not in cooperation with OCS. [Exhibit A, p. 1.]
13. On March 31, 2017, Petitioner contacted OCS and was in compliance with OCS from this date forward.
14. Petitioner received FAP benefits from March 13, 2017, ongoing. [Exhibit A, p. 1.]
15. On April 3, 2017, Petitioner filed a hearing request, protesting the Department's action. [Exhibit A, pp. 3-6.]

### **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.

### **Preliminary matter**

In this case, the evidence indicated that Petitioner did not receive FAP benefits from February 1, 2017 to March 12, 2017. It was discovered during the hearing that Petitioner reapplied for FAP benefits on March 13, 2017 and she was approved for benefits from this point forward. However, Petitioner testified that she still did not receive FAP benefits from the date of closure, February 1, 2017, to March 12, 2017, which the undersigned Administrative Law Judge (ALJ) will address below.

### **FAP closure**

In the present case, Petitioner applied for FAP benefits in mid-December 2016. Petitioner's FAP benefits closed for two reasons: (i) she failed to cooperate with OCS; and (ii) verification of self-employments and OCS compliance verifications were not returned. [Exhibit A, pp. 8-9.]

In regards to the failure to cooperate with OCS, the OCS caseworker testified Petitioner was in non-cooperation with the OCS effective March 26, 2016 because she failed to respond to the contact letters that were sent in May of 2016. [Exhibit A, p. 13.]

In regards to the failure to comply with the verifications, the Department indicated that it did not receive the requested verifications from Petitioner by the due date.

In response, Petitioner testified that she never received any of the OCS correspondence (i.e., First Customer Contact Letter), and she never received any VCL letter requesting proof of self-employment. She testified that she has never had issues in receiving mail previously. Petitioner testified, though, that she did provide to the Department proof of her self-employment income via fax on or about January 7 to 9 of 2017. Petitioner testified that she was informed via her FAP application interview and/or appointment to provide the self-employment verifications.

The OCS caseworker testified that the OCS correspondence was sent via central print; however, the OCS caseworker was unable to confirm if its system would show whether or not the correspondence was returned as undeliverable from the United State Postal Service (USPS). Petitioner acknowledged that the address on the OCS forms were

proper. The Department appeared to indicate that it did not receive any returned mail, including the VCL documents.

The following are the relevant policies for OCS and verification issues:

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105 (October 2016), p. 9. This includes completion of necessary forms. BAM 105, p. 9.

For FAP cases, the Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. BAM 130 (January 2017), p. 7. Send a negative action notice when: the client indicates refusal to provide a verification, or the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130, p. 7.

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.

At FAP application, client has 10 days to cooperate with the OCS. BEM 255, p. 12. Bridges informs the client to contact the OCS in the verification check list (VCL). BEM 255, p. 12. The disqualification is imposed if client fails to cooperate on or before the VCL due date when all of the following are true:

- There is a begin date of non-cooperation in the absent parent logical unit of work.
- There is not a subsequent comply date.
- Support/paternity action is still a factor in the child's eligibility.
- Good cause has not been granted nor is a claim pending; see Good Cause For Not Cooperating in this item.

BEM 255, p. 12. Note, if the client is cooperating at reapplication, but has not served the minimum one-month penalty for FIP or FAP, Bridges determines eligibility for the month following the penalty month; see FIP Disqualification in this item. BEM 255, p. 12.

Do all of the following at the application interview:

- Inform the applicant that the disqualification will be imposed unless a comply date is received from the support specialist.
- Encourage the applicant to cooperate with the support specialist and discuss the consequences of the non-cooperation.
- Promptly refer persons who indicate a willingness to cooperate to the primary worker from the CS icon. A support specialist can be reached at 1-866-540-0008 or 1-866-661-0005 to re-evaluate the individual's cooperation status; see Removing a Support Disqualification in this item.

BEM 255, p. 12.

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.

Based on the foregoing information and evidence, the Department improperly closed Petitioner's FAP benefits effective February 1, 2017, in accordance with Department policy.

First, the undersigned finds Petitioner's testimony credible that she submitted the self-employment verification on or about January 7 to 9 of 2017. Petitioner provide detailed testimony as to how she was requested during her FAP application interview and/or appointment to provide self-employment verifications, which she did from on or about January 7 to 9 of 2017. Even though Petitioner testified that she never received any

verification request, Petitioner's testimony credibly established that she submitted the forms before the VCL due date of January 17, 2017. [Exhibit A, p. 28.]

Second, the Department failed to send Petitioner a VCL informing her to contact the OCS regarding the non-cooperation. Policy states that at application, the client has 10 days to cooperate with the OCS and the Department Bridges informs the client to contact the OCS in the verification check list (VCL). BEM 255, p. 12. The Department failed to show whether it sent Petitioner any VCL informing her to contact OCS. Petitioner applied for FAP benefits in December 2016 and a VCL was subsequently issued in January 2017, but the VCL did not address her to contact the OCS. [Exhibit A, pp. 28-31]. Because the Department failed to send Petitioner a VCL requesting that she contact the OCS, the Department improperly closed her FAP benefits in accordance with Department policy. BEM 255, p. 12. The undersigned understands that Petitioner was eventually found in compliance with OCS on March 31, 2017. However, the Department must provide Petitioner with the opportunity, by issuing a VCL, for her to contact OCS and determine if she is in compliance as of the closure date of February 1, 2017. Also, the undersigned is not going into the issue of whether she received the OCS correspondence and her non-compliance letters because the Department failed to inform her to contact the OCS via a VCL after she submitted her application.

Third, the Department failed to provide Petitioner with timely notice of her FAP case closure. On January 30, 2017, the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits would close effective February 1, 2017, ongoing. [Exhibit A, pp. 8-11.] For failure to comply with the verification requirements, policy states timely notice is required to reduce or terminate benefits. BAM 130, p. 7. Timely notice is given for a **negative action** unless policy specifies adequate notice or no notice. BAM 220 (January 2017), p. 4. A timely notice is mailed at least 11 days before the intended negative action takes effect. BAM 220, p. 4. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p. 4. In this case, Petitioner had a termination of FAP benefits, which meant that she needed timely notice of her FAP closure. BAM 220, p. 4. The Notice of Case Action dated January 30, 2017 should have stated her FAP benefits would close effective March 1, 2017 and that would have been timely notice. See BAM 130, p. 7 and BAM 220, p. 4.

Accordingly, for the above stated reasons, the Department improperly closed Petitioner's FAP benefits effective February 1, 2017 in accordance with Department policy. The Department is ordered to reinstate Petitioner's FAP benefits from February 1, 2017 and to initiate verification of the self-employment income and to issue her a VCL informing her to contact the OCS regarding the non-compliance in accordance with Department policy. BAM 130, p. 7 and BEM 255, p. 12.

### 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 the Department did not act in accordance with Department policy when it improperly closed Petitioner's FAP benefits effective February 1, 2017.

Accordingly, the Department's FAP 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. Reinstate Petitioner's FAP case as of February 1, 2017;
2. Initiate verification of the self-employment income in accordance with Department policy;
3. Inform Petitioner to contact the OCS in a verification check list (VCL) to determine cooperation with OCS in accordance with Department policy;
4. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from February 1, 2017; and
5. Notify Petitioner of its decision.

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**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]

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CC:

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