



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: June 9, 2017
MAHS Docket No.: 17-005631
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 May 30, 2017, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], hearing facilitator, and [REDACTED], specialist.

ISSUES

The first issue is whether MDHHS properly determined Petitioner's State Emergency Relief (SER) eligibility.

The second issue is whether Petitioner is entitled to administrative relief for a Food Assistance Program (FAP) dispute.

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 [REDACTED], Petitioner applied for SER for energy.
2. On an unspecified date, MDHHS verified Petitioner had an active energy account with past due amounts of \$ [REDACTED] in electricity and \$ [REDACTED] in heat.
3. On [REDACTED], MDHHS approved Petitioner for payment of \$ [REDACTED] in electricity and \$ [REDACTED] in heat.
4. Petitioner did not report to MDHHS any information of a second energy account.

5. Petitioner was an ongoing FAP benefit recipient as a member of a household that included a minor child.
6. On [REDACTED] (and possibly earlier), Petitioner reported to MDHHS that he lived with a minor child.
7. On [REDACTED], MDHHS determined Petitioner's FAP eligibility, effective November 2016, in part, based on a 1-person FAP group.
8. Between [REDACTED], and [REDACTED], Petitioner reported to MDHHS that he lived with his minor child.
9. From [REDACTED] through [REDACTED], MDHHS did not issue written notice of Petitioner's FAP eligibility.
10. On [REDACTED], Petitioner requested a hearing to dispute the failure of MDHHS to factor his minor child in FAP eligibility since 2014.
11. On [REDACTED], MDHHS determined Petitioner's FAP eligibility from March 2017, in part, based on a 2-person FAP group that included Petitioner's child.

CONCLUSIONS OF LAW

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by MDHHS (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001 through R 400.7049. MDHHS policies are contained in the Services Emergency Relief Manual (ERM).

Petitioner requested a hearing, in part, to dispute a determination of SER concerning energy. MDHHS presented a State Emergency Relief Decision Notice (Exhibit 1, pp. 8-9) dated [REDACTED]. The notice approved Petitioner for \$ [REDACTED] for electricity service and \$ [REDACTED] for heat service. Petitioner contended that MDHHS essentially paid the wrong energy account and that MDHHS should have considered his eligibility under a different energy account.

Clients must be informed of all verifications that are required and where to return verifications. ERM 103 (October 2015), p. 6. [MDHHS is to] use the DHS-3503, SER Verification Checklist, to request verification and to notify the client of the due date for returning the verifications. *Id.* The due date is eight calendar days beginning with the date of application. *Id.* If the application is not processed on the application date, the deadline to return verification is eight calendar days from the date verification is requested. *Id.*

It was not disputed that MDHHS did not request information about the energy account that Petitioner wanted paid. Petitioner's hearing statements implied that MDHHS should have requested his energy account information.

MDHHS presented Petitioner's SER application (Exhibit 1, pp. 1-4) dated [REDACTED], [REDACTED]. The application indicated Petitioner sought payment for energy accounts. Petitioner left blank a section requesting Petitioner's energy account numbers (see Exhibit 1, p. 2). Boilerplate application language states to "ATTACH PROOF" of the services requested and the amount of need; it was not disputed that Petitioner did not attach any proof of need with his SER application.

Petitioner had the opportunity to present his account information with his application; he did not. Petitioner had the opportunity to write down his account energy information on the application; he did not. In response, MDHHS reasonably utilized their access to the database of Petitioner's energy provider.

MDHHS presented documentation (Exhibit 1, pp. 5-6) of Petitioner's energy account. The documents listed a "past due" amount of \$[REDACTED] for electric service and \$[REDACTED] for gas service. The name and address matched Petitioner's name and address. The listed electricity and heat accounts were "active" accounts.

MDHHS obtained active energy account information listing Petitioner's correct name and address. Given the documentation obtained by MDHHS from the energy provider's database, MDHHS would have no reason to believe further documentation was needed. Petitioner provided no information to MDHHS to suggest that MDHHS obtained incorrect account information.

It is found that MDHHS properly determined Petitioner's SER eligibility. If Petitioner seeks SER eligibility for a different energy account, Petitioner can reapply.

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, in part, to dispute FAP eligibility. Petitioner testimony indicated his dispute specifically concerned the exclusion of his child as a FAP-group member.

Petitioner testified he was the primary caretaker to a minor child since 2014. Petitioner testified he has repeatedly reported his status as a caretaker to MDHHS since 2014. Petitioner contended that he was owed FAP eligibility from 2014 because MDHHS failed

to factor his child as part of Petitioner's FAP eligibility. Petitioner's dispute is restricted by his delay in requesting a hearing.

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.* For FAP only, the client or AHR may request a hearing disputing the current level of benefits at any time within the benefit period. *Id.*

During the hearing, MDHHS was asked to provide information concerning any FAP benefit notices affecting benefit months from November 2016 or later. November 2016 was chosen as a cut-off date because a Redetermination (Exhibit 1, pp. 11-16) dated [REDACTED], was consistent with finding that Petitioner's most recent FAP-benefit period began November 2016. MDHHS testimony indicated a notice dated [REDACTED], informed Petitioner of an approval of \$ [REDACTED] in FAP benefits beginning November 2016. MDHHS testified that Petitioner's eligibility remained unchanged until MDHHS added Petitioner's child as a group member on [REDACTED], resulting in a supplement to Petitioner's FAP eligibility from March 2017.

Petitioner requested a hearing on [REDACTED]. As of [REDACTED], MDHHS had not issued written notices to Petitioner in the last 90 days. MDHHS policy allows Petitioner to dispute his "current" FAP eligibility. "Current" is interpreted to refer to the FAP eligibility as of the hearing request month. Thus, Petitioner was entitled to dispute FAP eligibility from April 2017 FAP. MDHHS had already supplemented Petitioner's FAP eligibility from March 2017. Thus, Petitioner appears to be entitled to no further administrative relief; a second consideration justifies otherwise.

Petitioner credibly testified he consistently complained to MDHHS about the MDHHS failure to add his child to his benefit case. For purposes of this decision, it will be assumed that Petitioner's complaints about the exclusion of his child in his FAP eligibility began in 2014. Specific dates of reporting were not discussed during the hearing, but inferences can be made based on presented evidence.

MDHHS presented Petitioner's Redetermination for FAP benefits (Exhibit 1, 11-16). Petitioner's handwritten signature was dated [REDACTED]. Petitioner listed a minor child as a household member. Petitioner listed that his child stayed with him 178 days per year. It was not disputed that that a parent can receive FAP benefits for a child that lives with the parent more than half of the year.

Given Petitioner's lengthy history of reporting his child as a household member and MDHHS redetermining Petitioner's FAP eligibility for November 2016 without factoring Petitioner's child, it is probable that Petitioner continued to complain to MDHHS shortly after he received written notice of his redetermined eligibility. MDHHS mailed written notice of Petitioner's redetermined eligibility on [REDACTED].

Petitioner's complaints in October 2016 are deemed to equate to a reporting of a household member addition. It is found that Petitioner reported to MDHHS between [REDACTED], and [REDACTED], that he lived with his minor child.

If Petitioner's hearing request is interpreted as a dispute of the written notice dated [REDACTED], then Petitioner's dispute is barred by untimeliness. If Petitioner's dispute is framed as a failure by MDHHS to process a change reported in October 2016, then MDHHS cannot claim written notice bars Petitioner from relief because MDHHS did not issue written notice to Petitioner between Petitioner's reporting and Petitioner's hearing request submission. It is found that Petitioner is not barred by untimeliness in pursuing the MDHHS failure to timely respond to Petitioner's reported household member change from October 2016.

A member add that increases benefits is effective the month after it is reported or, if the new member left another group, the month after the member delete. BEM 550 (January 2017), p. 4. [For FAP benefits, MDHHS is to] act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (January 2017), p. 7.

It was not disputed that MDHHS processed Petitioner's reported group-member change back to March 2017. Based on Petitioner's reporting date, MDHHS could have affected Petitioner's FAP eligibility as far back as November 2016. MDHHS provided no basis for not processing Petitioner's reported change to affect November 2016.

MDHHS will be ordered to redetermine Petitioner's FAP eligibility from November 2016 through February 2017 based on Petitioner's reported group-member change. This order does not necessarily mandate MDHHS to factor Petitioner's minor child in Petitioner's FAP eligibility from November 2016. MDHHS may need to determine if Petitioner's child was on another FAP case or verify that Petitioner's child resided with Petitioner as he claims.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner failed to establish administrative jurisdiction to dispute FAP eligibility from before November 2016. It is further found MDHHS resolved Petitioner's FAP eligibility dispute from March 2017. Petitioner's hearing request is **PARTIALLY DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly processed Petitioner's SER application dated [REDACTED], [REDACTED] concerning energy assistance. The actions taken by MDHHS are **PARTIALLY AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly processed Petitioner's reported change in household

members. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

(1) Redetermine Petitioner's FAP eligibility from November 2016 through February 2017, subject to the following findings:

- a. Petitioner reported to MDHHS that he lives with his minor child between [REDACTED], and [REDACTED];
- b. MDHHS failed to process Petitioner's reporting.

(2) Initiate a supplement of any benefits improperly not issued.

The actions taken by MDHHS are **PARTIALLY 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]

Petitioner

[REDACTED]