



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: April 21, 2017
MAHS Docket No.: 17-003459
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 April 12, 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], lead specialist for the Office of Child Support (OCS).

ISSUES

The first issue is whether MDHHS issued Food Assistance Program (FAP) to Petitioner in [REDACTED].

The second issue is whether MDHHS properly reduced Petitioner's FAP eligibility due to Petitioner's noncompliance with the Office of Child Support (OCS).

The third issue is whether MDHHS properly terminated Petitioner's FAP eligibility, effective [REDACTED].

The fourth issue is whether MDHHS properly affected Petitioner's Medical Assistance (MA) 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 and MA benefit recipient.
2. Petitioner's household included a child (hereinafter "Child") born in [REDACTED]
3. On an unspecified date, MDHHS deemed Petitioner to be uncooperative in obtaining child support for Child.
4. On [REDACTED], MDHHS initiated termination of Petitioner's FAP eligibility, effective [REDACTED], due to a failure to verify employment income and/or Petitioner's failure to cooperate with obtaining child support for Child.
5. On [REDACTED], MDHHS mailed Petitioner a Notice of Case Action informing Petitioner of an approval of FAP benefits for [REDACTED], and a termination of FAP benefits in [REDACTED] due to Petitioner's alleged failure to verify unspecified information.
6. On [REDACTED] Petitioner requested a hearing to dispute terminations of FAP and Medical Assistance (MA) eligibility.
7. MDHHS did not establish Petitioner was noncompliant with obtaining child support for Child or that Petitioner failed to verify information.
8. No evidence was presented concerning a termination of MA benefits.

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, in part, requested a hearing to dispute FAP eligibility. Petitioner testified that she wanted to dispute the absence of FAP benefits for [REDACTED]. The evidence was mixed concerning if Petitioner's received FAP benefits for [REDACTED] [REDACTED]

MDHHS presented a Notice of Case Action (Exhibit 1, pp. 6-7) dated [REDACTED]. The notice informed Petitioner of a termination of FAP benefits, effective [REDACTED]. MDHHS also presented a Notice of Case Action dated [REDACTED], (Exhibit 1, pp. 1-3) informing Petitioner of a FAP-benefit issuance for [REDACTED] and a termination of FAP benefits for [REDACTED]

Generally, when benefit notices have conflicted information, the latter notice is accurate. The present case appears to support the generality.

MDHHS presented an Eligibility Summary (Exhibit 1, p. 4). The summary listed a FAP issuance for ██████████ in the amount of ██████. It should also be noted that the document was erroneously numbered during the hearing; the page number for the document was updated to reflect a page number not used for another exhibit. The document was highly indicative that Petitioner received FAP benefits for ██████████.

It is found Petitioner received FAP benefits for ██████████. Petitioner's dispute concerning FAP eligibility for ██████████ will be dismissed. The analysis will proceed to consider Petitioner's FAP eligibility for ██████████.

The notice dated ██████████ stated Petitioner's FAP eligibility was terminated because of an alleged failure to verify employment income. Presented evidence justifying the termination was underwhelming.

[For all programs, MDHHS is to] use the DHS-3503, Verification Checklist to request verification. BAM 130 (July 2016), p. 3. [MDHHS must] allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. *Id.*, p. 6. [MDHHS] must tell the client what verification is required, how to obtain it, and the due date.... *Id.*, p. 3.

The MDHHS case summary made no mention of Petitioner's failure to verify income. The MDHHS packet forwarded with their summary contained no documents to support a termination of FAP benefits based on a failure to verify income. The evidence closest to being relevant was a Verification Checklist (Exhibit 1, pp. 4-5). The VCL informed Petitioner of a need to contact OCS concerning Child's paternity; the VCL stated nothing about a need to verify employment income.

MDHHS failed to verify that a VCL was mailed to Petitioner requesting verification, or that Petitioner failed to verify income. The failures justify finding that MDHHS did not properly request employment income documents from Petitioner. Thus, the FAP benefit termination is improper and MDHHS will be ordered to reinstate Petitioner's FAP eligibility. One final FAP-related issue must be considered.

It is known that Petitioner was a member of a FAP-benefit group of 3 persons. It is also known that not cooperating with child support results in a disqualification of only the uncooperative group member (see BEM 233). Given presented evidence, MDHHS appeared to terminate Petitioner's FAP eligibility due to failing to verify income in ██████████. Simultaneously, MDHHS imposed a child support disqualification. For unspecified reasons, MDHHS later rescinded the termination and issued FAP benefits for ██████████. Presented evidence was suggestive that the previously imposed child support disqualification may affect Petitioner's reinstatement of FAP eligibility. Thus, Petitioner's cooperation with child support is relevant to Petitioner's dispute and within the present case's administrative hearing jurisdiction.

[For FAP benefits,] 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 (April 2015), p. 1. Cooperation is a condition of eligibility. *Id.*, p. 9. Cooperation is required in all phases of the process to establish paternity and obtain support. *Id.* 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).

Id.

MDHHS alleged Petitioner failed to cooperate with child support by failing to provide sufficient information to identify Child's paternity. The facts supporting the allegation were not disputed.

Petitioner contacted OCS in, or shortly before [REDACTED]. Petitioner provided OCS with information sufficient to identify an individual for genetic testing. Genetic testing ruled-out the individual reported by Petitioner as a father to Child.

On [REDACTED], Petitioner reported another potential father to OCS. Petitioner reported that she met someone named "[REDACTED]" at a bar in Pontiac. OCS was unable to identify a father from Petitioner's reporting. OCS ceased pursuit of Child's paternity until [REDACTED].

On [REDACTED], Petitioner reported that her child's father could be "[REDACTED] [REDACTED]", whom she met at a bar in [REDACTED]. Petitioner also reported in [REDACTED] that a second potential father's name was deceased, and that she learned the name from a person whom she only can name as [REDACTED].

MDHHS testimony indicated Petitioner's reported information was insufficient to identify the child's father. Given the conflicted and deficient information provided by Petitioner, it is not known how MDHHS could have possibly identified the father of Child. MDHHS testimony contended that Petitioner's failure to provide identifying paternal information was the basis of her noncompliance. An inability to identify a biological parent, by itself, is an insufficient basis to impose a child support disqualification.

In *Black v Dept of Social Services*, 195 Mich App 27 (1992), the Court of Appeals addressed the issue of burden of proof in a non-cooperation finding. Specifically, the court in *Black* ruled that to support a finding of non-cooperation, the agency has the burden of proof to establish that the mother (1) failed to provide the requested verification and that (2) the mother knew the requested information. The *Black* court also emphasized the fact that the mother testified under oath that she had no further

information and the agency failed to offer any evidence that the mother knew more than she was disclosing. *Black* at 32-34.

Petitioner provided two different names for the potential father, two different locations for meeting the father, including two different cities of where the meeting occurred. Petitioner testimony excused her contradictions by her “messy past”. Nothing in Petitioner’s reporting was verified.

Though Petitioner’s reporting of Child’s paternity was dubious, it was also not rebutted by evidence from MDHHS. It is MDHHS’ burden to establish that Petitioner failed to provide known information for Child’s paternity. MDHHS did not meet that burden. It is found that MDHHS improperly determined Petitioner to be uncooperative with child support.

Failure to cooperate without good cause results in disqualification. *Id.*, p. 2. Disqualification includes member removal, as well as denial or closure of program benefits... *Id.*

The finding that MDHHS failed to establish Petitioner was noncompliant in obtaining child support justifies finding that the corresponding FAP disqualification was improper. Accordingly, the FAP benefit reduction based on child support disqualification was improper.

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. MDHHS (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner, in part, also requested a hearing to dispute MA eligibility. Petitioner testified that her MA eligibility was affected beginning in [REDACTED].

The only presented evidence concerning MA eligibility was Petitioner’s statement that MDHHS wrongly terminated her eligibility in [REDACTED]. MDHHS did not address Petitioner’s MA dispute in their case summary. MDHHS presented no notices affecting Petitioner’s MA eligibility. MDHHS presented no justification for a termination of Petitioner’s MA eligibility.

When MDHHS periodically fails to address an entire issue in their pre-hearing submissions, MDHHS can usually access their computer database during the hearing so that basic information can be provided. In the present case, no such information

could be obtained because this particular MDHHS office inexplicably does not have computer access in their hearings room.

MDHHS' presented evidence was so woeful, it cannot be concluded with any certainty that any adverse action was taken concerning Petitioner's MA eligibility, or even that she received MA benefits before [REDACTED]. Due to MDHHS' total failure to address MA, it will be assumed that MDHHS took some adverse action concerning Petitioner's ongoing MA eligibility. MDHHS will be accordingly ordered to reinstate Petitioner's MA eligibility for [REDACTED] at previously-issued levels.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS issued FAP benefits to Petitioner for [REDACTED]. Petitioner's dispute concerning FAP eligibility is **PARTIALLY DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FAP and MA eligibility. 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, effective [REDACTED], and Petitioner's MA eligibility, effective [REDACTED], subject to the following findings:
 - a. MDHHS failed to establish that Petitioner failed to verify employment income;
 - b. MDHHS failed to establish Petitioner was uncooperative in obtaining child support;
 - c. MDHHS failed to establish any basis for an adverse action concerning MA benefits; and

- (2) Issue 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]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Department Representative

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]