



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR



Date Mailed: April 14, 2017
MAHS Docket No.: 17-003546
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on April 12, 2017, from Detroit, Michigan. The Petitioner represented herself. The Department was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department of Health and Human Services (Department) properly close Petitioner's Food Assistance Program (FAP) and Child Development and Care (CDC) benefits?

Did the Department of Health and Human Services (Department) properly close Petitioner's Medical Assistance (MA) benefits?

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 January 19, 2017, the Department received Petitioner's completed Redetermination (DHS-1010) form. Exhibit A, p 20.
2. On February 13, 2017, the Department sent Petitioner a Verification Checklist (DHS-3503) requesting verification of family contributions by February 23, 2017. Exhibit A, pp 30-31.
3. On February 17, 2017, the Department received verification of Petitioner's earned income. Exhibit A, p 20.

4. On February 27, 2017, the Department notified Petitioner that one of her children was not eligible for Medical Assistance (MA) as of April 1, 2017. Exhibit A, pp 10-11.
5. On February 27, 2017, the Department notified Petitioner that she was not eligible for Child Development and Care (CDC) benefits as of March 19, 2017. Exhibit A, p 8.
6. On February 27, 2017, the Department notified Petitioner that she was not eligible for Food Assistance Program (FAP) benefits as of April 1, 2017. Exhibit A, pp 8-9.
7. On March 15, 2017, the Department received Petitioner's request for a hearing. Exhibit A, pp 6-7.

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 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.

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 Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

All earned and unearned income available is countable unless excluded by policy. Earned income means income received from another person or organization or from

self-employment for duties for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. Department of Human Services Bridges Eligibility Manual (BEM) 500 (January 1, 2016).

Clients must cooperate with the local office in determining initial and ongoing eligibility and this includes the completion of necessary forms. Department of Human Services Bridges Assistance Manual (BAM) 105 (October 1, 2016), p 8.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level when it is required by policy, required as a local office option, or information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. The Department uses documents, collateral contacts, or home calls to verify information. A collateral contact is a direct contact with a person, organization, or agency to verify information from the client. When documentation is not available, or clarification is needed, collateral contact may be necessary. Department of Human Services Bridges Assistance Manual (BAM) 130 (January 1, 2016), pp 1-9.

Petitioner was an ongoing MA, FAP, and CDC recipient when the Department initiated a routine review of her eligibility to receive continuing benefits. On January 19, 2017, the Department received Petitioner's completed Redetermination (DHS-1010) form. Petitioner had reported on this form, among other things, that she was receiving monetary contributions from family members, which fits the Department's definition of unearned income. Department of Health and Human Services Bridges Eligibility Manual (BEM) 503 (April 1, 2017), p 10. On February 13, 2017, the Department sent Petitioner a Verification Checklist (DHS-3503) requesting verification of the family contributions by February 23, 2017.

On February 27, 2017, the Department had not received any verification of the family contributions and it notified Petitioner that she was no longer eligible for FAP and CDC benefits. Petitioner remains eligible for MA benefits, but MA for one of her children closed.

Petitioner argued that she provided the Department with verification of her income on February 17, 2017. The Department does not dispute receiving documents from Petitioner on February 17, 2017, but only verification of earned income and not the family contributions. Petitioner failed to present evidence at her hearing that she submitted verification of the family contributions in a timely manner.

Therefore, the Department has established that it properly closed Petitioner's Food Assistance Program (FAP) and Child Development and Care (CDC) benefits for failure to provide the Department with information necessary to determine her eligibility to receive benefits.

The Department's representative testified that Petitioner is eligible for ongoing MA benefits but that MA for one of her children closed.

The production of evidence to support the department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich167; 405 NW2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction. The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced.

McKinstry, 428 Mich at 93-94, quoting *McCormick*, Evidence (3d ed), Sec. 336, p. 946.

Based on the evidence and testimony available during the hearing, the Department has failed to present sufficient evidence to establish why MA benefits for one of Petitioner's children, a member of Petitioner's household, was closed.

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 acted in accordance with Department policy when it closed Petitioner's Food Assistance Program (FAP) and Child Development and Care (CDC) benefits.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Medical Assistance (MA) benefits for a member of Petitioner's household.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED** with respect to Food Assistance Program (FAP) and Child Development and Care (CDC) benefits.

Accordingly, the Department's decision is **REVERSED** with respect to Medical Assistance (MA) benefits.

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:

Initiate a determination of the Petitioner's eligibility for Medical Assistance (MA) as of April 1, 2017, in accordance with policy with adequate notice to Petitioner.

KS/nr



Kevin Scully
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]

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

[REDACTED]