



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR



Date Mailed: January 9, 2018
MAHS Docket No.: 17-015696
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; 42 CFR 438.400 to 438.424; 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 January 8, 2018, from Lansing, Michigan. Petitioner was present for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Laura Bensinger, Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits effective October 31, 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. Petitioner is an ongoing recipient of FAP benefits, but she did not receive benefits from October 31, 2017 to on or about late December 2017.
2. On September 1, 2017, the Department sent Petitioner a Semi-Annual Contact Report (contact report) and the contact report was due back by October 1, 2017; however, policy allows Petitioner to submit the contact report by the end of the benefit period (October 31, 2017). [Exhibit A, pp. 60-61.]
3. On October 10, 2017, the Department sent Petitioner a Notice of Potential Food Assistance (FAP) Closure (potential closure notice) and notified her that the Department did not receive her contact report and that her FAP benefits would close effective October 31, 2017. [Exhibit A, p. 62.]

4. The Department indicated that it never received the contact report from Petitioner by October 31, 2017.
5. Petitioner claimed she submitted the contact report via fax on October 30, 2017. [Exhibit A, p. 73.]
6. Effective October 31, 2017, Petitioner's FAP benefits closed due to her alleged failure to return the contact report.
7. On November 14, 2017, the Department received Petitioner's contact report, but it was after the due date. [Exhibit A, pp. 63-64.]
8. On November 29, 2017, Petitioner filed a hearing request, protesting the Department's action. [Exhibit A, pp. 101-102.]

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.

As a preliminary matter, it initially appeared there was also an Office of Child Support (OCS) issue present in the case. [Exhibit A, p. 86-87 and 89-91.] However, the undersigned Administrative Law Judge (ALJ) lacks the jurisdiction to address the OCS issue because Petitioner's hearing request did not dispute this issue. [Exhibit A, pp. 101-102 and BAM 600 (January 2018), pp. 1-6.] As such, the undersigned will only address the closure of Petitioner's FAP benefits effective October 31, 2017, below:

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105 (October 2017), p. 9. This includes completion of necessary forms. BAM 105, p. 9.

The Michigan Department of Health & Human Services (MDHHS) must periodically redetermine or renew an individual's eligibility for active programs. BAM 210 (October 2017), p. 1. The redetermination/renewal process includes thorough review of all eligibility factors. BAM 210, p. 1. Redetermination, renewal, semi-annual and mid-certification forms are often used to redetermine eligibility of active programs. BAM

210, p. 1. Local offices must assist clients who need and request help to complete applications, forms and obtain verifications. BAM 210, p. 1.

For FAP only, the Department sends a DHS-2240-A, Mid-Certification Contact Notice, for groups assigned a 24-month benefit period during the 11th month of their benefit period and a DHS-1046, Semi-Annual Contact Report, the beginning of the fifth month for cases assigned a 12-month benefit period. BAM 210, p. 10.

The DHS-1046 and DHS-2240A may be completed by the client, the client's authorized filing representative or by the specialist (during a telephone call, home call or interview with the client). BAM 210, p. 10. However, the form must be signed by the client or authorized filing representative. BAM 210, p. 10.

A report is considered complete when all of the sections (including the signature section) on the DHS-1046 and the DHS 2240-A are answered completely and required verifications are returned by the client or client's authorized representative. BAM 210, p. 10. If an expense has changed and the client does not return proof of the expense, but all of the sections on the report are answered completely, the Department removes the expense from the appropriate data collection screen in the Department's system (Bridges) before running eligibility determination and benefit calculation (EDBC). BAM 210, p. 10.

For 12-month benefit period, the semi-annual contact report must be recorded, data collection updated and EDBC results certified in Bridges by the last day of the sixth month of the benefit period to affect benefits no later than the seventh month. BAM 210, p. 11. The contact is met by receipt of a completed DHS-1046 and required verifications. BAM 210, p. 11.

If the DHS-1046 is not logged in the Department's system (Bridges) by the 10th day of the sixth month, the Department will generate a DHS-1046A, Potential Food Assistance (FAP) Closure, to the client. BAM 210, p. 13. This reminder notice explains that the client must return the DHS-1046 and all required verifications by the last day of the month, or the case will close. BAM 210, p. 13.

If the client fails to return a complete DHS-1046 by the last day of the sixth month, the Department's system (Bridges) will automatically close the case. BAM 210, p. 13. If the client reapplies, treat it as a new application and Department's system (Bridges) will prorate the benefits. BAM 210, p. 13.

If the completed DHS-1046 and verifications are returned by the last day of the sixth month, the Department process the changes to ensure the client's benefits are available no later than 10 days after their normal issuance date in the seventh month of the benefit period. BAM 210, p. 13.

In the present case, the Department argued that Petitioner failed to submit the contact report by the end of the benefit period (October 31, 2017), which resulted in her FAP case closure. The Department testified that it properly mailed the contact report to Petitioner's address and the contact report was not returned back as undeliverable from the United States Postal Service.

In response, Petitioner testified that she never received the contact report. She testified that she called and spoke with her caseworker on October 27, 2017, to inform the caseworker that she did not receive the contact report. She testified the caseworker informed her that she would mail another contact report. On October 28, 2017, Petitioner testified she again called her caseworker to inform her that she did not receive the contact report via mail and was informed by the caseworker to go on MI Bridges to submit the form electronically (online). On October 28, 2017, she testified she had difficulty completing the form online and even called the Department's helpdesk for assistance, but to no avail. She testified that she eventually printed the contact report from online and faxed it to the Department several times from her friend's house on October 30, 2017. Petitioner provided a copy of the alleged fax confirmation showing she attempted to fax the contact report. [Exhibit A, p. 73.] A review of the fax confirmation history, though, fails to show the date and times the faxes were transmitted. [Exhibit A, p. 73.] Petitioner testified that her friend's fax machine is not set-up to show the date and time faxes are sent. It should be noted that one of Petitioner's alleged fax confirmations shows a successful transmittal to her caseworker's fax number of "(517) 346-9888." [Exhibit A, pp. 73 and 99.] Petitioner also provided additional testimony of dates in which she contacted her caseworker. And finally, Petitioner submitted the contact report via e-mail to the Department on November 14, 2017, which was after the due date, but the contact form shows that it was signed by Petitioner on October 27, 2017. [Exhibit A, pp. 63-64.]

Based on the foregoing information and evidence, the undersigned finds that the Department improperly closed Petitioner's FAP benefits effective October 31, 2017. The Department's position is that the Petitioner did not submit the contact report by October 31, 2017; and therefore, the closure of the FAP benefits was proper. However, the undersigned finds that Petitioner provided credible testimony and evidence that she submitted the contact report via fax on October 30, 2017, which was before the due date. Petitioner's testimony is supported by the fax confirmation that shows a successful transmittal to her caseworker's fax number. [Exhibit A, pp. 73 and 99.] The undersigned understands the Department's claim that the fax confirmation does not show the date and time of the transmittal. Nevertheless, the undersigned finds the evidence persuasive to support Petitioner's claim that the contact report was submitted on October 30, 2017. In fact, on November 14, 2017, Petitioner submitted the contact report via e-mail to the Department and the form was signed by Petitioner on October 27, 2017. [Exhibit A, pp. 63-64.] The undersigned finds that Petitioner's signature date of October 27, 2017 on the contact form further bolsters her argument that the contact report was faxed late October 2017. As such, the undersigned finds Petitioner's testimony credible that she submitted the contact report before the due date. Therefore, the Department did not act in accordance with Department policy

when it improperly closed Petitioner's FAP benefits effective October 31, 2017, in accordance with Department policy. See BAM 210, pp. 1-13.

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 October 31, 2017.

Accordingly, the Department's 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 case as of October 31, 2017;
2. Redetermine Petitioner's FAP eligibility for October 31, 2017, ongoing (redetermination process) in accordance with Department policy;
3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from October 31, 2017, ongoing; and
4. Notify Petitioner of its decision.

EF/nr



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

Laura Bensinger
1050 Independence Blvd
Charlotte, MI
48813

Eaton County DHHS- via electronic mail

BSC2- via electronic mail

M. Holden- via electronic mail

D. Sweeney- via electronic mail

Petitioner

[REDACTED]
[REDACTED], MI
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