



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: June 26, 2018
MAHS Docket No.: 18-005071
Agency No.: ██████████
Petitioner: ██████████

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; 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 June 20, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Richkelle Curney, hearing facilitator.

ISSUES

The first issue is whether MDHHS properly did not process Petitioner's request for a vehicle purchase.

The second issue is whether MDHHS properly processed a supplement of Food Assistance Program (FAP) 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. At all relevant times, Petitioner was an ongoing FAP recipient.
2. As of December 2017, Petitioner had three children who received Supplemental Security Income (SSI). Two of Petitioner's children received \$████/month (federal and state combined). Petitioner's third child received \$████ less in SSI due to recoupment not due to fraud.

3. For December 2017, MDHHS originally issued \$ [REDACTED] in FAP benefits to Petitioner.
4. As of January 2018, the SSI received by each of Petitioner's children increased by \$ [REDACTED]
5. From January 2018 through March 2018, MDHHS originally issued \$ [REDACTED] in FAP benefits to Petitioner.
6. Following an administrative hearing decision, MDHHS supplemented Petitioner \$ [REDACTED] in FAP benefits for December 2017 and \$ [REDACTED] for each month from January 2018 through March 2018. The budgets factored \$ [REDACTED] in unearned income for December 2017 and \$ [REDACTED] in unearned income from January 2018 through March 2018.
7. On April 4, 2018, Petitioner submitted to MDHHS two purchase estimates for vehicles.
8. On April 27, 2018, Petitioner requested a hearing to dispute her FAP eligibility from December 2017 through March 2018, MDHHS' failure to process her vehicle purchase request, MDHHS' failure to process a replacement of FAP benefits, and an unspecified Child and Development Care (CDC) issue.
9. As of June 20, 2018, MDHHS had not yet processed Petitioner's request for vehicle purchase.
10. On June 20, 2018, during a hearing, Petitioner verbally withdrew her disputes concerning CDC benefits and FAP benefit replacement.

CONCLUSIONS OF LAW

Direct Support Services (DSS) is established by the Social Welfare Act, MCL 400.1-.119b. The program is administered by the Department pursuant to MCL 400.10 and 400.57a and Mich Admin Code R 400.3603.

Petitioner requested a hearing to dispute the time MDHHS is taking to process her request for a vehicle purchase. Petitioner submitted to MDHHS two estimates for a vehicle purchase on April 4, 2018. As of the date of hearing, MDHHS had not yet responded to Petitioner's vehicle purchase request.

Direct Support Services (DDS) are goods and services provided to help families achieve self-sufficiency. DSS includes services, such as a vehicle purchase, which directly correlate to removing an employment-related barrier. There is no entitlement for DSS. The decision to authorize DSS is within the discretion of the DHS or PATH program. BEM 232 (October 2014), pp. 1-32.

As a service within MDHHS' discretion, any remedy available to a client concerning DSS is limited. MDHHS policy does not impose any standards or timeframes on the processing of DSS requests. Though MDHHS has discretion in processing DSS requests, it is not presumed that their discretion is unlimited. Given MDHHS' policy, any MDHHS action concerning DSS will be accepted barring an abuse of discretion.

Petitioner submitted her vehicle purchase estimates to her former MDHHS office. MDHHS testimony indicated that Petitioner's submission was overlooked, but evaluation of Petitioner's request began shortly after Petitioner made her new MDHHS specialist aware of her previous submission.

Given the evidence, MDHHS has taken a fair amount of time to process Petitioner's vehicle purchase, but it cannot be stated to be an abuse of discretion. Without an abuse of discretion, no administrative order concerning DSS can be issued.

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner also requested a hearing to dispute her FAP eligibility for December 2017 through March 2018. Following an administrative hearing decision, MDHHS redetermined Petitioner's eligibility from December 2017 through March 2018. Following MDHHS' attempt at complying with the administrative order, Petitioner received \$[REDACTED] in FAP benefits for December 2018 and \$[REDACTED] in FAP benefits for January 2018 through March 2018. Petitioner testified that she was skeptical that the FAP issuances were correct because MDHHS never provided her with budget summaries for the benefit months from December 2017 through March 2018. MDHHS responded that they were unable to provide budgets to Petitioner because Petitioner's FAP eligibility was determined by an override by the Help Desk.¹

MDHHS provided FAP budgets for December 2017 and January 2018.² During the hearing, all FAP budget factors were discussed. The only dispute concerned one of Petitioner's children's SSI benefits.

Petitioner has three children who receive SSI. Two of Petitioner's children receive the maximum amount of SSI (\$[REDACTED] in December 2017 and \$[REDACTED] beginning January 2018). Petitioner testified that her third child's SSI is reduced by \$[REDACTED] due to recoupment by the

¹ Typically, MDHHS specialists complete budgets through the MDHHS database and clients are mailed summaries of the budgets.

² Presumably the budget for January 2018 mirrors Petitioner's budgets from February 2018 and March 2018 as Petitioner's original issuances and supplements were the same for all three benefit months.

Social Security Administration (SSA). Presented budgets verified that MDHHS factored the \$█ received by Petitioner's third child in determining Petitioner's supplements for December 2018 through March 2018.

Bridges counts the gross amount of current SSA-issued SSI as unearned income. BEM 503 (July 2017), p. 36. Amounts deducted by an issuing agency to recover a previous overpayment or ineligible payment are not part of gross income. BEM 500 (January 2017), p. 6. A notable exception to counting recouped benefits within gross income is when the recoupment is due to an intentional program violation (see *Id.*).

MDHHS did not present evidence that Petitioner's child's SSI benefits were recouped due to IPV. Petitioner credibly denied that SSA was recouping \$█/month in SSI from her child due to previous fraud; Petitioner's testimony was credible and unrebutted.

Given the evidence, MDHHS improperly included Petitioner's child's recouped SSI benefits as part of Petitioner's group's gross income. MDHHS's improper inclusion applies to all FAP benefit months from December 2017 through March 2018. MDHHS will be again ordered to recalculate Petitioner's eligibility for those months.

Petitioner also requested a hearing concerning CDC benefits and a request for FAP benefit replacement. Petitioner testified that MDHHS satisfactorily resolved both issues and that she no longer needs a hearing for either issue.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner withdrew her dispute concerning CDC and FAP replacement. Concerning CDC benefits and FAP replacement, Petitioner's hearing request is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS has not abused their discretion in processing Petitioner's request for a vehicle purchase. The actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly determined Petitioner's FAP 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 from December 2017 through March 2018 subject to the finding that MDHHS improperly included \$ [REDACTED] in countable SSI for one of Petitioner's children; and
- (2) Initiate a supplement of FAP benefits, if any, improperly not issued.

The actions taken by MDHHS are **REVERSED**.

CG/



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) 763-0155; 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

Tara Roland 82-17
MDHHS-Wayne-17-Hearings

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

BSC4
M Holden
D Sweeney
L Brewer-Walraven
C Gardocki
MAHS