



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: August 17, 2018
MAHS Docket No.: 18-006813
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 August 9, 2018, from Detroit, Michigan. Petitioner appeared and was unrepresented. ██████████ ██████████, Petitioner's niece, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Natalie McLaurin, hearing facilitator.

ISSUES

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

The second issue is whether MDHHS took various proper actions concerning Petitioner's Food Assistance Program (FAP) 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. On May 22, 2018, Petitioner submitted renewal documents to MDHHS (Exhibit A, pp. 52-66). Petitioner reported that her niece (hereinafter "Niece") lived with her since March 2018. Petitioner also reported a loss of employment as of April 19, 2018.
2. As of May 22, 2018, Niece was an ongoing recipient under her mother's FAP case.

3. On May 29, 2018, Petitioner submitted an application for SER requesting assistance with relocation. Petitioner requested a move to a residence with a monthly rent of \$[REDACTED] and no included utilities. Petitioner's application listed a monthly household income of \$[REDACTED] (from Petitioner's child's Supplemental Security Income (SSI)). (Exhibit A, pp. 5-10)
4. On May 30, 2018, MDHHS mailed Petitioner a State Emergency Relief Decision Notice informing Petitioner that her relocation request was denied due to the shelter not being affordable. (Exhibit A, pp. 12-13)
5. On an unspecified date, Petitioner began receiving unemployment compensation benefits of \$[REDACTED]/two weeks.
6. On June 26, 2018, MDHHS received Petitioner's hearing request disputing denial of SER, closure of Medical Assistance (MA), and amount of FAP benefits. (Exhibit A, p. 4)
7. On an unspecified date, MDHHS determined Petitioner's FAP eligibility for July 2018 based on \$[REDACTED] in UCB and without Niece as a FAP group member.
8. On an unspecified date, MDHHS updated Petitioner's employment income to \$0 to affect Petitioner's FAP eligibility for July 2018.
9. During the hearing, Petitioner withdrew her dispute concerning MA benefits.

CONCLUSIONS OF LAW

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. 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 a closure of MA benefits. During the hearing, Petitioner withdrew her dispute. Given Petitioner's verbal withdrawal, Petitioner's hearing request concerning MA benefits will be dismissed.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin

Code, R 400.7001-.7049. SER policies are contained in the Emergency Relief Manual (ERM).

Petitioner requested a hearing, in part, to dispute a denial of SER for relocation assistance. The corresponding denial notice stated that Petitioner's application was denied because the rent was not affordable.

Housing affordability is a condition of eligibility for SER- relocation services. MDHHS is to authorize SER for services only if the SER group has sufficient income to meet ongoing housing expenses. A SER group that cannot afford to pay their ongoing housing costs plus any utility obligations will not be able to retain their housing, even if SER is authorized. MDHHS is to deny SER if the group does not have sufficient income to meet their total housing obligation. (ERM 207 (October 2015), p. 1.)

If no utilities are included in the rent obligation, the total housing obligation cannot exceed 75 percent of the group's total net countable income. *Id.* The percentage increases up to 100 percent, depending on which utilities are included in the client's housing obligation (see *Id.*, p. 3).

Petitioner testified that she sought SER for a rent obligation of \$[REDACTED]. Petitioner testified that the rent included no utilities. Petitioner's \$[REDACTED] rent is only affordable if 75% of her total net countable income equals or exceeds the rent obligation.

In determining affordability, MDHHS relied on Petitioner's SER application reported household income of \$[REDACTED]. Multiplying Petitioner's reported household income by 75% results in a net countable income of \$[REDACTED].

Petitioner contended that MDHHS' calculation improperly excluded her child support income. First, Petitioner's child support income in the 30 days after applying for SER appeared to be insufficient to make her rent affordable; thus, including child support would not change the denial. Secondly, Petitioner did not report child support income on her SER application. It is Petitioner's responsibility, subject to penalties of perjury, to report income. MDHHS will not be faulted for relying on Petitioner's application statements of income in determining SER eligibility. Given the evidence, MDHHS properly denied Petitioner's SER application.

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 the amount of FAP eligibility from April 2018 through July 2018. During the hearing, Petitioner raised disputes concerning group size, budgeted UCB income, and a reported loss of employment income.

MDHHS determined Petitioner's FAP eligibility based on a group size of 4 persons (without Niece as a group member). Petitioner contended that MDHHS improperly excluded Niece as a FAP group member. Petitioner's hearing statements suggested an expected remedy of recalculation of FAP eligibility from 2017 because that is when Niece began living with her and Petitioner reported it to MDHHS.

Clients have 90 days to request a hearing from a written notice to dispute benefit eligibility (see BAM 600). If Petitioner thought that MDHHS erred by not including Niece as a FAP group member in 2017, she should have requested a hearing about the issue within 90 days of any written notice of FAP benefits; Petitioner's hearing request dated 6/26/18, was certainly past the 90 day period from any notices mailed to Petitioner in 2017. Petitioner's untimely hearing request precludes any remedy involving Petitioner's 2017 FAP eligibility. For good measure, Petitioner's claim that Niece began living with her in 2017 is contradicted by her own written statement that Niece began living with her in March 2018.

Petitioner testified she reported Niece as a group member on all applications in 2018, including one dated April 11, 2018. The evidence established that Petitioner reported the change on a renewal document dated May 22, 2018. MDHHS testimony expressed problems in adding Niece to Petitioner's case because Niece received ongoing FAP benefits with her mother.

A person must not participate as a member of more than one FAP group in any given month ... BEM 212 (October 2015), p. 10. When a child spends time with multiple caretakers who do not live together, such as joint physical custody, parent/grandparent, etc., MDHHS is to determine a primary caretaker. BEM 212 (October 2015), p. 3. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). *Id.* The child is always in the FAP group of the primary caretaker. *Id.* MDHHS is to determine primary caretaker by using a 12-month period. *Id.*, p. 4. The 12-month period begins when a primary caretaker determination is made. *Id.*

MDHHS testimony acknowledged that Petitioner verified Niece's school attendance in response to a Verification Checklist, and that Petitioner's mother failed to submit verification that Niece resided with her. As of the hearing date, Niece was still not included on Petitioner's FAP case. Based on the events, MDHHS should have removed Niece from her mother's FAP benefit case so that she could be added to Petitioner's case.

Given the evidence, failed to timely process Petitioner's reported change in group members. Any remedy of supplemental benefits would not be justified because MDHHS cannot issue FAP benefits to Petitioner for Niece when Niece's mother already received

FAP benefits for Niece. Petitioner is entitled to a remedy ordering MDHHS to process Petitioner's reported change so that further delay in adding Niece to Petitioner's case is avoided.

Petitioner also disputed MDHHS' calculation of her UCB income as it relates to July 2018 eligibility. MDHHS determined a monthly UCB of \$[REDACTED] from Petitioner's biweekly UCB payments of \$[REDACTED]. Petitioner contended her monthly UCB was \$[REDACTED].

For FAP benefits, MDHHS converts biweekly stable income into a 30-day period by multiplying the income by 2.15. BEM 505 (October 2017) p. 8. Multiplying Petitioner's biweekly income by 2.15 results in a countable monthly income of \$[REDACTED]. Thus, MDHHS properly calculated Petitioner's countable UCB.

Petitioner also claimed that MDHHS should have affected her FAP eligibility from April 2018 based on an employment income stoppage. Petitioner's renewal documents dated May 22, 2018, verified Petitioner reported loss of employment on April 19, 2018.

BEM 505 allows clients to report changes within 10 days. When changes are reported and verified timely, MDHHS must affect the benefit month after the change occurred or reported (whichever is earlier). For untimely reported changes, MDHHS affects the benefit month occurring after 10 days after the reporting date.

Petitioner testified that she reported the loss of employment to MDHHS on April 19, 2018. Petitioner provided no corroboration for her reporting date.

MDHHS responded that Petitioner did not report loss of employment until May 22, 2018, when Petitioner reported the job loss on renewal documents. MDHHS' response was consistent with Petitioner's written statement of job loss on her renewal documents (see Exhibit A, pp. 64-65) which notably did not indicate a previous reporting. MDHHS' response was also consistent with comments documented by MDHHS specialists (see Exhibit A, p. 85) which did not list any contacts by client concerning job loss. Also noteworthy is that MDHHS documented attempts to contact Petitioner in April 2018 and May 2018 after Petitioner initially failed to submit renewal documents; the documentation is consistent with helpful communication by MDHHS despite Petitioner's claims to the contrary.

Given the evidence, Petitioner reported to MDHHS a loss of employment income on May 22, 2018. Therefore, Petitioner was entitled to an effective change month of July 2018 (the first full month after 10 days from the reporting). As MDHHS affected Petitioner's FAP eligibility for July 2018, Petitioner is entitled to no remedy.

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 MA benefits. Concerning, MA benefits, Petitioner's hearing request is **DISMISSED**.

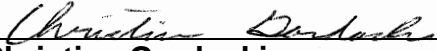
The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly calculated Petitioner's UCB concerning July 2018 FAP eligibility. It is also found that MDHHS properly processed Petitioner's reported loss of employment income to affect July 2018. These 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 failed to process Petitioner's reported change in group members. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Initiate the process of adding Niece to Petitioner's FAP eligibility; and
- (2) Initiate a supplement of any benefits 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

Kathleen Verdoni
MDHHS-Saginaw-Hearings

Petitioner

[REDACTED]
[REDACTED]
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