



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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[REDACTED] MI [REDACTED]

Date Mailed: April 23, 2019
MOAHR Docket No.: 19-002773
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; 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 April 18, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Sara Terreros, supervisor.

ISSUES

The first issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility.

The second issue is whether MDHHS properly terminated Petitioner's Family Independence Program (FIP) 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 April 20, 2017, MDHHS issued a Wage Match Client Notice to [REDACTED] (hereinafter, "Son"). The notice was sent under the "case name" of Son. (Exhibit A, pp. 28-29.)
2. As of December 2018, Petitioner was an ongoing recipient of FAP benefits. Son was not a member of Petitioner's group.
3. As of December 2018, Petitioner's eligibility for FIP benefits is not known.

4. On December 9, 2018, Petitioner applied for State Emergency Relief (SER). (Exhibit A, pp. 4-10.)
5. On December 11, 2018, MDHHS mailed Petitioner a SER Verification Checklist requesting proof of Petitioner's vendor pre-paid debit card balance. The due date for Petitioner was December 18, 2018. (Exhibit A, pp. 11-12.)
6. On December 21, 2018, Petitioner submitted to MDHHS an ATM receipt that did not include her name. (Exhibit A, p. 14.)
7. On January 24, 2019, MDHHS terminated Petitioner's FIP eligibility, effective May 2018. (Exhibit A, pp. 18-21.)
8. On March 11, 2019, Petitioner requested a hearing to dispute terminations of FAP and FIP benefits. Petitioner also requested a hearing to dispute Medicaid eligibility.
9. On March 25, 2019, MDHHS issued a Benefit Notice informing Petitioner of a termination of FAP benefits, effective March 2019. (Exhibit A, pp. 30-31.)
10. On April 18, 2019, during an administrative hearing, Petitioner verbally withdrew her dispute concerning Medicaid.

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 to dispute an unspecified action concerning Medicaid. During the hearing, Petitioner testified she reapplied for Medicaid and was approved. Petitioner also testified that she no longer needs a hearing to dispute Medicaid eligibility. Based on Petitioner's withdrawal, Petitioner's hearing request to dispute Medicaid will be dismissed.

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 requested a hearing to dispute a termination of FAP benefits. MDHHS testimony indicated that Petitioner's FAP eligibility ended beginning March 2019.¹ A Benefit Notice dated March 25, 2019, stated that Petitioner's FAP eligibility ended due to Petitioner's alleged failure to verify employment information from 2017 for Son. For purposes of this decision, it will be assumed that the Wage Match Client Notice sent to Son in 2017 was not timely returned to MDHHS.

MDHHS submits client Social Security Numbers to TIA quarterly to be cross-matched with the work history records submitted by Michigan employers. BAM 802 (July 2018) p. 1. This information is compared to the client's gross earnings record in Bridges. *Id.* If there is a discrepancy between a case and employment records, MDHHS is to request verification of the wage match earnings by generating a DHS-4638, Wage Match Client Notice, from Bridges. *Id.*, p. 2. The DHS-4638 automatically gives the client 30 days to provide verification. *Id.* If verifications are not returned by the 30th day, case action will need to be initiated to close the case in Bridges. *Id.* If a client reapplies after a case closed 31 days earlier from an unreturned wage match, the case may be opened without wage match information. *Id.*, p. 3.

The first problem with the closing of Petitioner's FAP eligibility is that MDHHS inexplicably waited over two years before closing Petitioner's case. Technically, MDHHS policy has no time limit on closing a case due to an unreturned Wage Match Client Notice but waiting two years to affect a client's eligibility is *prima facie* absurd. If nothing else, MDHHS should have resent the Wage Match Client Notice to allow Petitioner a second opportunity to return the notice. This analysis assumes that Petitioner should have been held responsible for returning the notice which does not appear to be true.

The second problem with MDHHS closing Petitioner's FAP eligibility is the Wage Match Client Notice did not appear to have relevance to Petitioner's case. The Wage Match Client Notice sent in 2017 listed a case name under Son. Petitioner asserted that Son had his own case in 2017 and was not on her case; MDHHS did not refute Petitioner's assertion. MDHHS also agreed that Son was not part of Petitioner's FAP case when MDHHS closed Petitioner's case. Perhaps Son was a member of Petitioner's FAP group at some point but such a circumstance does not justify closure of Petitioner's FAP case after Son was not a member of Petitioner's FAP group.

A third problem with closing Petitioner's FAP eligibility was the lack of timely notice. Generally, MDHHS is required to issue advance notice of FAP closure so that clients have an opportunity to respond to the action. BAM 220 (January 2019) pp. 4-5. Some exceptions apply (see *Id.*, p. 4) but not in the present case. Thus, MDHHS was required

¹ Petitioner subsequently reapplied for FAP benefits on March 11, 2019 and was approved from the application date. Petitioner's reapplication did not resolve the lack of FAP benefits issued to Petitioner for the first 10 days of March 2019.

to issue timely notice to Petitioner for the alleged failure to return a Wage Match Client Notice. In the present case, MDHHS terminated Petitioner's FAP eligibility beginning March 1, 2019, and sent Petitioner notice of the action 24 days later. Thus, Petitioner was denied timely notice by not receiving advance notice of the benefit termination.

Given the evidence, MDHHS improperly took action on a Wage Match Client Notice unrelated to Petitioner's FAP eligibility, failed to take timely action on the Wage Match Client Notice, and failed to issue proper timely notice on FAP closure. The proper remedy for all MDHHS errors is reinstatement of Petitioner's eligibility from March 1, 2019.

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131. 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 a termination of FIP benefits. MDHHS testimony indicated that Petitioner's FIP eligibility ended March 2019. During the hearing, MDHHS searched their database for a corresponding written notice. The search revealed that the only written notice issued to Petitioner stated Petitioner's FIP eligibility would end May 2018 due to Petitioner's alleged failure to verify a pre-paid debit card balance.² (Exhibit A, pp. 18-21.)

MDHHS mailed Petitioner a VCL giving Petitioner until December 21, 2018, to verify the balance of a pre-paid debit card. The VCL specifically cited an ATM receipt listing the client's name as an example of acceptable verification. Petitioner timely returned an ATM receipt but it did not include her name. Given the evidence, MDHHS has a legitimate basis for terminating Petitioner's FIP eligibility. However, MDHHS did not comply with their procedural requirements in terminating Petitioner's FIP eligibility.

For all programs, upon certification of eligibility results, Bridges automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. A notice of case action must specify the following: the action(s) being taken by the department; the reason(s) for the action; the specific manual item which cites the legal base for an action or the regulation or law itself; an explanation of the right to request a hearing; and the conditions under which benefits are continued if a hearing is requested. BAM 220 (January 2019), pp. 2-3.

² The notice also stated that Petitioner's income exceeded the income limit for FIP. MDHHS presented no evidence justifying closure of FIP benefits due to excess income. Thus, excess income was not evaluated as a proper basis for closure.

The only known relevant written notice of FIP benefit termination stated that Petitioner's FIP eligibility would end May 2018.³ MDHHS did not request verification of Petitioner's pre-paid debit card until several months later in December 2018. MDHHS cannot terminate a client's FIP eligibility for failing to verify assets months before verification of assets was requested.

Given the evidence, MDHHS improperly terminated Petitioner's FIP eligibility. Petitioner is entitled to a recalculation of FIP eligibility from May 2018.⁴

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 Medicaid eligibility. Concerning Medicaid eligibility, Petitioner's hearing request is **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 FIP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reinstate Petitioner's FAP eligibility effective March 1, 2019, subject to the following findings:
 - a. MDHHS improperly took action on a Wage Match Client Notice irrelevant to Petitioner's FAP eligibility;
 - b. MDHHS waited two years to take action on a Wage Match Client Notice without providing an updated opportunity for Petitioner to reverify the Wage Match Client Notice; and
 - c. MDHHS failed to issue timely notice to Petitioner of FAP closure; and
- (2) Recalculate Petitioner's FIP eligibility effective May 2018 subject to the finding that MDHHS failed to verify a pre-paid debit card balance before May 2018.
- (3) Issue a supplement of any benefits improperly not issued.

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

CG/cg



Christian Gardocki

Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

³ During the hearing, it was thought that the notice applied to Petitioner's May 2019 FIP eligibility. It was not realized that the notice applied to Petitioner's eligibility from 2018 until the writing of this decision.

⁴ It is possible that Petitioner is not entitled to a supplement of FIP benefits due to excess income. Again, Petitioner's income eligibility was not evaluated in this decision because MDHHS did not raise the issue within their case presentation.

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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office Of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Kimberly Kornoelje
MDHHS-Kent-Hearings

Petitioner

[REDACTED]
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BSC4
B Sanborn
B Cabanaw
M Holden
D Sweeney