



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

[REDACTED]
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Date Mailed: May 23, 2019
MOAHR Docket No.: 19-003373
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 May 22, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED], Petitioner's spouse, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by April Nemec, hearing facilitator.

ISSUES

The first issue is whether Petitioner timely requested a hearing to dispute a sanction related to an application denial of Family Independence Program (FIP) benefits.

The second issue is whether MDHHS properly terminated 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 September 25, 2017, MDHHS imposed a 3-month sanction against Petitioner for FIP-related noncompliance.
2. As of December 2018, Petitioner was an ongoing recipient of FAP and FIP benefits. Petitioner's FAP eligibility was scheduled for review by the end of March 2019.

3. On December 21, 2018, MDHHS mailed Petitioner a Notice of Noncompliance and a Notice of Case Action informing Petitioner of a termination of FIP benefits beginning February 2019 due to employment-related noncompliance. MDHHS also notified Petitioner of a 6-month FIP benefit disqualification period due to noncompliance.
4. On February 1, 2019, MDHHS began a 6-month FIP sanction against Petitioner for employment-related noncompliance.
5. On an unspecified date in February 2019, MDHHS mailed Petitioner a Semi-Annual Contact Report (SACR). The due date for Petitioner to return the report was an unspecified date in early March 2019.
6. On March 9, 2019, Petitioner applied for FIP benefits. Exhibit A, pp. 6-11.
7. On an unspecified date in March 2019, Petitioner returned to MDHHS the SACR. Petitioner reported having a bank account.
8. On March 18, 2019, MDHHS mailed Petitioner a Verification Checklist requesting verification of Petitioner's bank account. The due date to return verification was March 28, 2019.
9. On March 18, 2019, MDHHS denied Petitioner's FIP application due to an employment-related sanction.
10. On March 28, 2019, Petitioner requested a hearing to dispute the denial of FIP benefits and closure of FAP benefits.
11. As of March 28, 2019, Petitioner had not returned to MDHHS verification of her bank account.

CONCLUSIONS OF LAW

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 (RTM).

On March 28, 2019, Petitioner requested a hearing to dispute a denial of a March 9, 2019, dated application requesting FIP benefits. A Notice of Case Action dated March 28, 2019, stated that MDHHS denied Petitioner's application due to a 6-month sanction. Exhibit A, pp. 26-29.

A Work Eligible Individual (WEI) and non-WEIs (except ineligible grantees, clients deferred for lack of childcare, and disqualified aliens), see BEM 228, who fails, without good cause, to participate in employment or self-sufficiency-related activities, must be penalized. BEM 233A (July 2018) p. 1. Penalties include case closure for a minimum of three months for the first episode of noncompliance and six months for the second episode of noncompliance. *Id.*

Comments on Petitioner's case from staff at Petitioner's assigned Michigan Works! Agency suggested that Petitioner's spouse failed to attend required appointments which led to a conclusion that Petitioner's spouse was noncompliant with employment-related activities. The comments further stated that Petitioner's spouse's claim of health difficulties was summarily rejected because he worked an unspecified few hours per week. In response, Petitioner's spouse testified that he suffers from sickle cell anemia and degenerative disc disease which renders his full participation with employment-related activities to be difficult. The correctness of MDHHS summarily rejecting Petitioner's spouse's health problems is concerning and suggests that MDHHS failed to consider whether Petitioner's spouse's health problems preclude Petitioner's spouse's full participation in employment-related activities despite being able to work some hours. Before an analysis of whether MDHHS properly concluded that Petitioner's spouse was noncompliant with employment-related activities, Petitioner must establish she timely disputed MDHHS' finding of noncompliance.

A client's request for hearing must be received in the MDHHS local office within 90 days of the date of the written notice of case action. BAM 600 (August 2018) p. 6. Generally, hearing requests must be submitted to MDHHS in writing. *Id.*, p. 2. Requests for FAP benefit hearings may be made orally. *Id.*

MDHHS sent Petitioner a Notice of Noncompliance dated December 21, 2018, stating that a 6-month sanction would be imposed upon Petitioner due to noncompliance with employment-related activities. Exhibit A, pp. 20-21. MDHHS sent to Petitioner additional notice of the sanction on a Notice of Case Action also dated December 21, 2018. Petitioner did not request a hearing until March 28, 2019.

MDHHS received Petitioner's hearing request 97 days after mailing notice of FIP closure and its associated sanction. Thus, Petitioner's hearing request was untimely, and there is no jurisdiction for an administrative hearing concerning MDHHS imposing a sanction on Petitioner.

Petitioner also disputed the length of the sanction. Petitioner's testimony acknowledged that MDHHS sanctioned her for a 3-month period in or near 2017; MDHHS testimony credibly stated that Petitioner's disqualification history indicated Petitioner's first sanction occurred September 25, 2017. Thus, a 6-month sanction appears appropriate for Petitioner's second sanction in December 2018.

Petitioner agreed that MDHHS imposed a 6-month disqualification in December 2018. MDHHS testified that the disqualification began February 1, 2019; MDHHS' testimony was credible because the sanction begin date should correspond to the first date of the month when Petitioner stopped receiving FIP benefits. Petitioner contended that she already served the 6-month sanction though she had no documentary evidence to support her contention.¹

Given the evidence, MDHHS properly denied Petitioner's application for FIP benefits dated March 9, 2019, due to an employment-related sanction. Further, there is no administrative hearing jurisdiction to evaluate whether the sanction was properly imposed due to Petitioner's untimely hearing request.

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 a termination of FAP benefits beginning April 2019. MDHHS testimony indicated that Petitioner's FAP eligibility ended due to Petitioner's failure to submit requested documents as part of a 6-month redetermination.

MDHHS must periodically redetermine an individual's eligibility for active programs. BAM 210 (January 2019) p. 1. The redetermination process includes thorough review of all eligibility factors. *Id.* A complete DHS-1046, Semi-Annual Contact Report, must be submitted by groups with countable earnings and a 12-month benefit period. *Id.*, p. 11. The SACR is mailed to clients during the 5th month of the benefit period. *Id.*

For FAP benefits, the redetermination process begins when the client returns redetermination documents. BAM 210 (January 2018), p. 3. Benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. *Id.* The DHS-3503, Verification Checklist, should be sent after the redetermination interview for any missing verifications allowing 10 days for their return. *Id.*, p. 17. Verifications must be provided by the end of the current benefit period or within 10 days after they are requested, whichever allows more time. *Id.*

Assets must be considered in determining FAP eligibility. BEM 400 (May 2018), p. 1. MDHHS is to verify countable assets at application, redetermination, and when a change is reported. *Id.*, p. 59.

¹ If Petitioner previously served a 6-month sanction, the outcome may actually be worse for Petitioner. In such a case, MDHHS could impose a lifetime sanction for Petitioner's third time for being noncompliant.

Petitioner's benefit period was certified through March 2019. MDHHS testimony indicated receiving Petitioner's SACR in March 2019 but without verification of a bank account. Because assets are an eligibility factor for FAP benefits, MDHHS properly required verification of the account. MDHHS properly requested verification of Petitioner's bank account by sending a VCL on March 18, 2019, requesting documentation by March 28, 2019. Petitioner had until the later of the VCL due date (March 28, 2019) or the end of the benefit period (March 31, 2019) to return verification of her bank account. Petitioner's testimony acknowledged that she did not return to MDHHS verification of her bank account by the end of March 2019.

Petitioner testified that her cousin passed away near the time that MDHHS requested bank account verification. Petitioner also testified that she was very close with her cousin and that her death contributed to her failure to timely return bank account verification. Petitioner's statements amounted to a claim of good cause. Though Petitioner's circumstance were sympathetic, MDHHS does not allow for good cause for not verifying assets. Given the evidence, MDHHS properly terminated Petitioner's FAP eligibility. Petitioner's recourse is to reapply for FAP benefits.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner failed to timely dispute a termination of FIP benefits beginning February 2019 and/or an associated 6-month sanction. Concerning a termination of FIP benefits and sanction, 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 terminated Petitioner's FAP eligibility beginning April 2019. It is also found that MDHHS properly denied Petitioner's FIP application dated March 9, 2019, due to an employment-related sanction. Concerning the termination of FAP benefits and denial of FIP benefits, the actions of MDHHS are **AFFIRMED**.

CG/jaf


Christian Gardocki
Administrative Law Judge
for Robert Gordon, 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 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

Tamara Morris
MDHHS-Genesee-UnionSt-Hearings

Petitioner

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BSC4
B Sanborn
B Cabanaw
M Holden
D Sweeney