



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 3, 2019
MOAHR Docket No.: 19-003473
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 2, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Sara King, Assistance Payments Supervisor. During the hearing, a 42-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-42.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits case, effective April 1, 2019?

Did the Department properly close Petitioner's Medicaid (MA) benefits case, effective April 1, 2019?

Did the Department properly close Petitioner's Medicare Savings Plan (MSP) benefits case, effective April 1, 2019?

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 times relevant to the instant matter, Petitioner was married and living at the [REDACTED] address in [REDACTED], Michigan.

2. Petitioner was an ongoing recipient of FAP, MA, and MSP benefits from the Department with a household size of one.
3. Petitioner's husband was removed from Petitioner's benefits cases in May 2017 based on Petitioner's assertion that he had moved out of the home on [REDACTED]. Exhibit A, p. 3.
4. In early 2019, the Department's Office of Inspector General (OIG) opened an investigation into Petitioner's household composition as the Department suspected that Petitioner's husband was living at the address on [REDACTED]. The OIG searched an online database and found that Petitioner's husband, amongst other things, was registered to vote and had a driver's license all with the [REDACTED] address as his home address. On February 21, 2019, the OIG agent visited the address, and Petitioner's husband answered the door. Petitioner's husband told the agent that he and his wife were separated and that he did not live at the [REDACTED] address. Exhibit A, pp. 3-4;15-42.
5. On March 5, 2019, the OIG agent issued a report making a finding that a preponderance of the evidence showed that Petitioner's husband lived at the [REDACTED] address. The agent "recommended a VCL [verification checklist] be sent to the subject for group composition ([REDACTED] added) and associated income. Specialist please modify/certify the OIG findings after the necessary time id given for return of the VCL." Exhibit A, pp. 3-4; 15-42.
6. That very same day, the Department added Petitioner's husband to Petitioner's FAP group and issued to Petitioner a Notice of Case Action informing Petitioner that her FAP case was closing, effective April 1, 2019. The reason given was that Petitioner's income for a group size of two exceeded the limit for eligibility. Included in the income calculation was about \$4,000 per month in income attributed to Petitioner's husband. Exhibit A, pp. 5-8.
7. Also on March 5, 2019, the Department issued to Petitioner a Verification Checklist requesting information related to Petitioner's pre-pad debit card. Exhibit A, pp. 9-10.
8. On March 18, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MA and MSP benefits cases were closing, effective April 1, 2019, as a result of Petitioner's alleged failure to verify her husband's income. Exhibit A, pp. 11-12.
9. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's actions in this case.

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.

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.

In this case, Petitioner had open FAP, MA, and MSP benefits cases with a household size that included only Petitioner. Each of those cases closed, effective April 1, 2019, based largely on the Department's conclusion that Petitioner's estranged husband was living with her. When the Department determined that Petitioner's husband was living in the home, it added his wages to the FAP budget, rendering Petitioner income ineligible for FAP benefits, resulting in the FAP case closure. The MA and MSP benefits cases closed based on Petitioner's alleged failure to verify her husband's income after he was added to her household. Petitioner vehemently objects to the Department's conclusion that her husband is a member of her household and contends that he has not lived with her in years. As all of the actions taken by the Department stem from the Department's conclusion that Petitioner's husband was a member of Petitioner's household, the same analysis applies, and they will be analyzed together.

For all of the programs involved, household composition is a relevant eligibility-related factor. BEM 211 (February 2019), p. 1; BEM 212 (April 2019), p. 1. Further, a client and his or her spouse who are living together are considered a member of the same household for all of the involved programs. BEM 211, p. 2; BEM 212, p. 1. When information regarding an eligibility related factor, such as household composition, is unclear, inconsistent, or contradictory, the Department requires verification from the client. BAM 130 (April 2017), p. 1. To request verification of information, the Department sends a verification checklist which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. The Department allows the client 10 calendar days to provide the verification that is required. BAM 130, p. 7. The Department sends a negative action notice when: (1) the client indicates a refusal to provide a verification OR (2) the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130, p. 7.

Petitioner has consistently asserted that her husband does not live with her. The OIG's investigation presented evidence that suggested otherwise. Household composition is an eligibility related factor in all of the programs at issue in this case. Based on the two parties' positions regarding that factor, it is clear that information concerning the matter of Petitioner's household composition is unclear and perhaps contradictory. In such cases, the Department is not permitted to simply make a conclusion on that factor without first providing Petitioner the opportunity to verify her position by issuing a verification checklist that clearly requests information related to the contested eligibility related factor. In this case, there was no verification checklist sent regarding Petitioner's household composition, even though the Department's own OIG report specifically recommended one be sent. Thus, the Department failed to follow Department policy when adding Petitioner's husband to her FAP, MA, and MSP benefits cases, which resulted in the closure of those cases, effective April 1, 2019.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FAP, MA, and MSP benefits cases.

DECISION AND ORDER

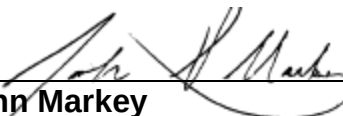
Accordingly, the Department's decisions are **REVERSED**.

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 FAP, MA, and MSP benefits cases, effective April 1, 2019;
2. Remove Petitioner's husband from those benefits cases, effective April 1, 2019;
3. If the Department believes that Petitioner's husband should be added to Petitioner's household, the Department must follow Department policy before making a conclusion on that eligibility-related factor;
4. If Petitioner is eligible for additional FAP, MA, or MSP benefits that were not provided as a result of the Department's improper addition of Petitioner's husband to Petitioner's household, promptly issue to Petitioner supplement(s); and

5. Notify Petitioner in writing of its decisions.

JM/cg



John Markey
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

Via Email:

MDHHS-Monroe-Hearings
M. Holden
D. Sweeney
D. Smith
EQAD
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]