



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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Date Mailed: May 10, 2019
MOAHR Docket No.: 19-003766
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 8, 2019, from Lansing, Michigan. Petitioner personally appeared and testified. Richard Kaleniecki appeared as a witness. The Department of Health and Human Services (Department) was represented by Jeanica Ashwood, ES worker and Robert Bankston, ES worker.

ISSUE

Did the Department properly calculated FAP and MA 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 8, 2019, Petitioner and her spouse filed a hearing request with the MDHHS disputing her and her spouse's FAP benefits, and, her spouse's MA closure.
2. In November of 2018, the Department assessed eligibility for Petitioner and her spouse for Medicaid. Petitioner receives RSDI income. Petitioner received G2S MA. There is no dispute regarding this program for Petitioner.
3. In November of 2018, the Department opened HMP on behalf of Petitioner's spouse for approximately eight days. The Department then determined that it failed to budget Petitioner's RSDI income of [REDACTED] in the spouse's MA budget. On

January 9, 2018, the Department issued a Health Care Coverage Determination Notice stating that Petitioner's spouse is not eligible for HMP due to excess income and closed the MA case on December 1, 2018. Exhibit A.8-11.

4. The Department subsequently re-opened the spouse's MA case in error.
5. On April 17, 2019, the Department issued a Verification Checklist that does not state that the Department requested a 2018 1040 or any 1099s from 2018.
6. On April 19, 2019, the Department closed the case, after Petitioner requested a hearing. The Notice of Case Action is not in the file.
7. On April 24, 2019, a pre-hearing conference was held at which time the Department stated it first became aware that Petitioner's spouse is self-employed.
8. There Department failed to go forward with presenting relevant evidence regarding the status of the FAP 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, the Department's arguments and presentation of the facts were convoluted and inconsistent. The Department failed to summarize when or why Petitioner's FAP case closed. At the same time, the Hearing Summary, prepared by an individual who was not at the administrative hearing, states: "The food assistance was denied due to failure to provide proof of income. However, the food has also been reprocessed and

pending verification of income due 4/29/19 to determine eligibility.” Exhibit A.1. And yet, at the May 8, 2019, hearing, the Department did not have any evidence of having requestee any verification(s) pursuant to the Hearing Summary representations. Nor did the Department know the status of the FAP case. No relevant documentary exhibits were submitted regarding the FAP case.

Regarding the MA, the Department contends that Petitioner’s spouse has excess income. Further, the Department contends that the case was opened in error, closed, reopened for an unknown reason, then closed. As to why, the Department contends that Petitioner failed to deliver all the pages of his 2018 1040, and any 1099s from 2018.

Petitioner’s spouse argues that he is not excess income as he is self-employed and will and can submit any income verifications if only the Department would tell him what he needs to submit.

Here, the Department did not present a verification checklist of having requested certain pages of Petitioner’s 1040, and/or any verification requesting any or all 1099s from 2018 as required by policy. BAM 115, 550, 130. The Verification Checklist in the evidentiary packet does not request a 1040 or 1099s. In addition, when the Department was asked what policy supported this request, the Department responded that it did not have the policy, did not know which policy, and did not have access to the policy.

Here, the Department failed to meet its burden to go forward with the evidence to create a minimal presentation as to what was done and why. The evidence, notices, and documentary evidence are inconsistent. It appears that at some point there were verbal requests for information by the Department that was not stated in a verification checklist. Policy found in BEM 115, 500, 556 and general application processing policy found in BAM 130, as well as the corresponding federal regulations found at 7 CFR 273.2(g)(sop), 273.9, 273.10, 273.11, and 273.2 require the Department to clearly indicate what it needs in terms of verification, and when it is due. In addition, federal and state regulations and policy further require the Department’s notices to clearly state the law and policy upon which the Department relied in taking an action so as to adequately inform clients as to the authority relied upon intaking the action.

Based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, the undersigned finds that the Department actions are not supported by credible and accurate evidence of record, and not supported by its policy for which the Department is charged with carrying out. Thus, the Department is ordered to reprocess Petitioner’s FAP and Petitioner’s spouse’s MA case, and to clearly and specifically state what verification(s) are due and when they are due.

DECISION AND ORDER

Accordingly, the Department's decision is **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. Reprocess Petitioner's FAP case and reprocess Petitioner's spouse's MA case by reviewing what verification(s) are necessary,
2. Issue policy required Verification Checklist(s) in writing as required by policy, if there are any missing verifications, and
3. Issue new notice to Petitioner as to the outcome of reprocessing the FAP and MA cases.

Petitioner shall retain a right to a hearing for 90 days from the date of the new notice.

IT IS SO ORDERED.

JS/dh



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

