



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] MI [REDACTED]

Date Mailed: October 10, 2019
MOAHR Docket No.: 19-009706
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 October 3, 2019, from [REDACTED] Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Cristina Tanzini, specialist.

ISSUES

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

The second issue is whether MDHHS properly pended Petitioner's Medicare Cost Share (MCS) 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. As of June 2019, Petitioner was an ongoing recipient of FAP and MCS benefits.
2. On June 4, 2019, MDHHS mailed Petitioner a Redetermination form concerning FAP and MCS benefits. The Redetermination informed Petitioner to complete and return the form to MDHHS by July 5, 2019. An interview for FAP benefits was scheduled for the same date. Exhibit A, pp. 6-13.
3. As of July 5, 2019, Petitioner failed to return the Redetermination form.

4. On July 5, 2019, MDHHS mailed Petitioner a Notice of Missed Interview informing Petitioner to submit the Redetermination form, and to reschedule the interview. Exhibit A, p. 15.
5. As of July 31, 2019, Petitioner had not submitted the Redetermination form and Petitioner's FAP benefit period expired.
6. On August 19, 2019, MDHHS terminated Petitioner's MCS eligibility due to a failure to return a Redetermination form.
7. On August 20, 2019, Petitioner submitted a Redetermination form to MDHHS.
8. On August 23, 2019, MDHHS mailed Petitioner an Appointment Notice informing Petitioner of a telephone interview on August 28, 2019, concerning redetermination of FAP benefits. The notice included the phone number of Petitioner's newly assigned specialist.
9. On August 23, 2019, Petitioner called the phone number of his previous specialist who did not answer; an interview was not conducted.
10. On August 30, 2019, Petitioner requested a hearing to dispute the terminations of FAP and MCS. Petitioner also requested a hearing concerning Family Independence Program (FIP) benefits.
11. As of August 30, 2019, Petitioner had not submitted proof of assets to MDHHS.
12. As of October 3, 2019, Petitioner's MCS status was pending for proof of assets.
13. On October 3, 2019, during a hearing, Petitioner withdrew his dispute concerning FIP benefits.

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 (RFT).

Petitioner's hearing request checked a dispute concerning FIP benefits. Petitioner's hearing request was curious because Petitioner testified he neither applied nor received FIP benefits. During the hearing, Petitioner stated that he did not need a hearing concerning FIP benefits. MDHHS had no objections to Petitioner's withdrawal. Due to

his hearing request withdrawal, Petitioner's dispute concerning FIP benefits 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 beginning August 2019. MDHHS testified that Petitioner's FAP eligibility expired after July 2019 due to Petitioner's failure to timely submit a Redetermination form and a failure to be interviewed.

For FAP benefits, the redetermination process begins when the client returns redetermination documents. BAM 210 (April 2019), p. 3. Benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. *Id.*

Petitioner's FAP eligibility period was certified through July 2019. It was not disputed that MDHHS mailed Petitioner a Redetermination form in June 2019 and that Petitioner failed to return the form to MDHHS until August 20, 2019. Though Petitioner failed to return the Redetermination form after the expiration of his benefit period, he may be eligible to "subsequent processing". "Subsequent processing" refers to a processing of FAP benefits after the end of a benefit period when the client is at fault for the closure.

If a client files an application for redetermination before the end of the benefit period, but fails to take a required action, the case is denied at the end of the benefit period. *Id.*, p. 21. If the client takes the required action within 30 days after the end of the benefit period, MDHHS is to proceed as follows:

- Re-register the redetermination application using the date the client completed the process.
- If the client is eligible, prorate benefits from the date the redetermination application was registered. *Id.*

Petitioner may be entitled to subsequent processing due to submitting a Redetermination form within 30 days after his benefit period expired. For subsequent processing to occur, Petitioner must complete the redetermination process within 30 days of the end of his benefit period. MDHHS alleged that Petitioner did not complete the process because he failed to be interviewed.

If the client misses a redetermination interview, Bridges (the MDHHS database) sends a DHS-254, Notice of Missed Interview. *Id.*, p. 6. The notice informs the client of a due date to return the Redetermination form and/or reschedule the missed interview.

MDHHS already mailed Petitioner a DHS-254, Notice of Missed Interview after Petitioner failed to be interviewed on July 5, 2019. After Petitioner submitted a Redetermination form on August 20, 2019, MDHHS mailed Petitioner an Appointment Notice on August 23, 2019, informing Petitioner of an interview on August 28, 2019. The notice included two phone numbers – one for Petitioner’s ongoing specialist who was on an extended absence, and one for the temporary specialist assigned to handle Petitioner’s case. Petitioner called the number of his ongoing specialist and got no answer. MDHHS stated that Petitioner should have called his temporary specialist to complete the interview. Under the circumstances, Petitioner’s confusion was understandable.

An MDHHS specialist testified that she spoke to the temporarily assigned specialist who stated that Petitioner was called at the time of FAP interview, and Petitioner did not respond. The testimony is hearsay and not as reliable as Petitioner’s implied testimony that MDHHS did not call him on the date of the interview. Petitioner’s efforts to be interviewed are further supported by Petitioner requesting a hearing only two days after not being interviewed. Notably, Petitioner submitted his hearing request on the 30th day after his FAP eligibility expired; thus, Petitioner’s efforts are consistent with an attempt at completing redetermination requirements within the 30-day period allowed for subsequent processing.

Given the evidence, MDHHS failed to properly contact Petitioner for a FAP interview on August 28, 2019. The failure entitles Petitioner to a remedy of potential FAP eligibility from August 28, 2019, if he completes the redetermination process.

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 also requested a hearing to dispute a termination of MCS benefits. A Health Care Coverage Determination Notice dated August 19, 2019, informed Petitioner of a termination of MCS due to failing to return the Redetermination form and/or submitting proofs. Exhibit A, pp. 16-19.

MDHHS may close a client’s MCS eligibility when a Redetermination form is mailed and not timely returned. In such circumstances, timely notice is sent. *Id.*, p. 17. Timely notice

pendes an action for 12 days, in part, to allow a client to return missing documents; this period is called the negative action period. Petitioner returned his Redetermination on August 20, 2019, during the negative-action period. Thus, MDHHS properly sent notice of closure, but Petitioner complied with his procedural requirements in time to justify a reversal of closure.

MDHHS' testimony credibly indicated that Petitioner's MCS eligibility was currently pending. MDHHS explained that Petitioner fulfilled one procedural requirement by returning a Redetermination form, but Petitioner did not verify his bank assets. Petitioner did not allege that he submitted proof of assets.

Given the evidence, Petitioner failed to timely submit proof of assets. Petitioner's failure would justify not approving ongoing MCS eligibility. Thus, keeping Petitioner's MCS case status as pending is proper.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner withdrew his dispute concerning FIP benefits. Concerning FIP 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 pended Petitioner's MCS case due to Petitioner's failure to timely submit proof of assets. The 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 interview Petitioner concerning FAP benefits. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reschedule Petitioner for a FAP interview subject to the finding that MDHHS was at fault for Petitioner not being interviewed on August 28, 2019; and
- (2) Process Petitioner's FAP eligibility accordingly.

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

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 (via electronic mail)

Dawn Tromontine
MDHHS-[REDACTED] Hearings
BSC4
M Holden
D Sweeney
D Smith
EQAD

Petitioner (via first class mail)

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]