



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: November 21, 2019
MOAHR Docket No.: 19-010668
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 November 18, 2019 from Detroit Michigan. Petitioner appeared and was represented by Douglas Brunsch, who is her father and Authorized Hearing Representative (AHR). The Department of Health and Human Services (Department) was represented by Ursula Barrett-Weatherly, Family Independence Manager. During the hearing, an eight-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-8.

ISSUE

Did the Department properly provide the Medicaid (MA) benefits the Department informed Petitioner she was eligible for?

Did the Department properly deny Petitioner's Food Assistance Program (FAP) benefits application?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing recipient of MA benefits from the Department under the full-coverage AD-Care program.

2. On [REDACTED] 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her full-coverage MA benefits under the AD-Care program were approved and certified for another year, effective [REDACTED], 2019, ongoing.
3. After the [REDACTED] 2019 Health Care Coverage Determination Notice, the Department did not issue to Petitioner any subsequent notices with respect to her MA benefits.
4. For some reason, the Department stopped providing any MA benefits to Petitioner, effective [REDACTED], 2019, ongoing. However, the Department did not issue any notice to inform Petitioner of the change.
5. On or about [REDACTED], 2019, Petitioner submitted to the Department an application for FAP benefits.
6. On [REDACTED], 2019, the Department issued to Petitioner a Verification Checklist requesting verifications related to Petitioner's assets. The verifications were due back by [REDACTED] 2019. Exhibit A, pp. 6-8.
7. On [REDACTED], 2019, Petitioner provided to the Department documentation responsive to the [REDACTED], 2019 Verification Checklist. The Department deemed those submissions insufficient, for whatever reason.
8. On [REDACTED] 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her application for FAP benefits was denied as a result of Petitioner's alleged failure to verify her asset eligibility. Exhibit A, pp. 1-5.
9. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's actions with respect to her MA benefits and FAP application.

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).

In this case, Petitioner submitted to the Department a [REDACTED] 2019 request for hearing objecting to actions taken by the Department with respect to Petitioner's MA coverage and FAP benefits.

MA COVERAGE

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.

According to the evidence on the record, the Department last issued a notice with respect to Petitioner's MA benefits on [REDACTED], 2019. That notice informed Petitioner that she was approved for full-coverage MA under the AD-Care program, effective [REDACTED] 2019, ongoing. For whatever reason, however, the coverage was not provided. During the hearing, the Department representative could not explain why Petitioner's MA benefits were not provided but could confirm that Petitioner did not receive any MA benefits from the Department from May 1, 2019 through at least November 2019.

Upon certification of eligibility results, the Department notifies a client in writing of positive and negative actions by generating an appropriate notice of case action. BAM 220 (October 2018), p. 2. A notice of case action must inform the client of (1) the action being taken by the Department, (2) the reason or reasons for the action, (3) the basis in policy for the action, (4) how to contest the action, and (5) the conditions under which benefits are continued if a hearing is requested. BAM 220, pp. 2-3. A positive action is a Department action to approve an application or increase a benefit. BAM 220, p. 1. A negative action is a Department action to deny an application or to reduce, suspend, or terminate a benefit. BAM 220, p. 1.

There are two types of notices, adequate notice and timely notice. BAM 220, p. 3. Adequate notice is a written notice sent to the client at the same time an action takes effect and is given for an approval or denial of an application and for increases in benefits. BAM 220, p. 3. Timely notice is given for a negative action unless policy specifies adequate notice or no notice applies. BAM 220, p. 4. A timely notice is mailed at least 11 days before the intended negative action take effect. BAM 220, p. 5. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p. 5.

Petitioner had ongoing MA benefits that were approved for an extended period of time, effective [REDACTED], 2019. At some unknown point, the Department, without any notice, deactivated that coverage. Thus, Petitioner was led to believe that she had full-coverage MA when in fact the Department was providing no such coverage. Because the coverage was stripped without notice, the Department violated Department policy.

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 did not act in accordance with Department policy when it stripped Petitioner of her previously approved full-coverage MA benefits without providing any notice to Petitioner.

FAP BENEFITS

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.

Petitioner submitted to the Department an application for FAP benefits on or about [REDACTED], 2019. On [REDACTED], 2019, the Department issued to Petitioner a Verification Checklist requesting documentation related to Petitioner's eligibility for FAP benefits. Most relevantly, the document requested verifications related to Petitioner's assets. The requested documentation was due by [REDACTED], 2019.

On [REDACTED], 2019, the Department received documentation from Petitioner concerning her assets. The Department deemed the submission insufficient. On [REDACTED], 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her FAP application was denied due to Petitioner's alleged failure to return verifications related to Petitioner's assets. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's action.

Verification of relevant, eligibility-related information is required at application. BAM 130 (April 2017), p. 1. Asset information is highly relevant in determining eligibility for FAP. BEM 400 (July 2019), p. 1. To request verification of information, the Department sends a VCL which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. For FAP cases, the Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is required. BAM 130, p. 7. Verifications are considered to be timely if received by the date they are due. 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.

The [REDACTED] 2019 Verification Checklist requested information related to Petitioner's assets. The requested documents were due by September 3, 2019. Petitioner submitted to the Department documentation concerning her assets on September 3, 2019. As the Department did not provide in the hearing packet what Petitioner actually provided that day, it is impossible to judge whether it in fact is sufficient to answer all questions related to asset eligibility. However, based on the description provided by the

Department witness, it was certainly sufficient to establish that Petitioner made a reasonable effort to provide the necessary documentation by the time the deadline passed. Since Petitioner neither indicated a refusal to provide the verification nor had the time period elapsed without Petitioner making a reasonable effort to provide the verification, per policy, the Department was prohibited from issuing a negative action notice.

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 did not act in accordance with Department policy when it denied Petitioner's FAP application.

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. Reinstate Petitioner's full-coverage MA under the AD-Care program back to [REDACTED], 2019, ongoing;
2. Provide that coverage from [REDACTED] 2019 through at least the date of this hearing decision and ensure that if any negative action is taken, appropriate notice is provided;
3. If the wrongful stripping of MA coverage without proper notice resulted in benefits not being provided that were required to be provided, ensure that supplements are issued;
4. Reprocess Petitioner's FAP application;
5. If any eligibility-related factors remain unclear, inconsistent, contradictory, or incomplete, follow Department policy regarding requesting and processing verifications;
6. Determine Petitioner's eligibility for FAP benefits from the date of application, ongoing;

7. If Petitioner is eligible for additional FAP benefits, ensure that a supplement is promptly provided; and
8. Notify Petitioner in writing of its decisions.

JM/tm



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

DHHS

Sharnita Grant
25637 Ecorse Rd.
Taylor, MI
48180

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: FAP: M. Holden; D. Sweeney
MA- Deanna Smith; EQADHShearings
AP Specialist-Wayne County