



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: July 31, 2019
MOAHR Docket No.: 19-006795
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 July 29, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. Also appearing on behalf of Petitioner was [REDACTED]. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearings Facilitator. During the hearing, an eight-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-8.

Petitioner's hearing request raised issued related Department actions taken with respect to both Petitioner's Food Assistance Program (FAP) benefits and Medicaid (MA) benefits. During the hearing, it became clear that Petitioner's objection to the action taken with respect to the MA case had been resolved in Petitioner's favor as Petitioner's son, [REDACTED], had his full-coverage MA benefits restored in a manner that resulted in no lapse in coverage. Both [REDACTED] and Petitioner agreed to the withdrawal of Petitioner's hearing request with respect to the MA issue. That request is approved. Accordingly, this decision will only address Petitioner's challenge to the Department's action concerning her FAP benefits.

ISSUE

Did the Department properly close Petitioner's FAP benefits case, effective July 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. Petitioner was an ongoing recipient of FAP benefits from the Department. Petitioner's household consists of herself and her three adult children, [REDACTED], [REDACTED], and [REDACTED]. However, Petitioner was only receiving FAP benefits for a group of three as [REDACTED] was a student and disqualified from the group.
2. On or about June 12, 2019, the Department issued to Petitioner a Benefits Notice. The Benefits Notice was acknowledged by the Department witness to be woefully deficient as far as providing "notice" of anything. Exhibit A, p. 5.
3. To the extent that the Benefits Notice did qualify as a "notice," it informed Petitioner that "[y]our assistance under the Food Assistance program will end _____." The Benefits Notice further contained a table indicating that Petitioner's FAP benefits were based on a household size of three, earned income of \$2,924, and unearned income of \$785. It also stated that Petitioner received a standard deduction of \$158 and was given the benefit of the heat/utility allowance of \$543. Exhibit A, p. 5.
4. Petitioner credibly testified that she had \$1,200 in monthly housing costs. Those were not included in the table despite there being a line item for such housing costs. Exhibit A, p. 5.
5. On [REDACTED] 2019, Petitioner submitted to the Department a hearing request objecting to the Department's actions with respect to Petitioner's FAP and MA benefits.¹
6. Petitioner's FAP benefits case was closed, effective July 1, 2019.

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.

In this case, Petitioner's FAP benefits case was closed, effective July 1, 2019. However, the only notice the Department issued regarding that action was what

¹ As explained above, the portion of the hearing request concerning the MA benefits has been withdrawn.

appears to be a June 12, 2019 Benefits Notice that simply states, in relevant part, “[y]our assistance under the Food Assistance program will end _____.” Left as a mystery was when that assistance would end or why it would end. Petitioner filed a timely hearing request objecting to the Department’s uncertain and unexplained action.

Clients have the right to contest a Department decision affecting eligibility or benefit levels, including termination of program benefits when the client believes the decision is incorrect. BAM 600 (October 2018), pp. 1, 5. When a hearing request is filed, the matter is transferred to the Michigan Office of Administrative Hearings and Rules (MOAHR) for a hearing before an Administrative Law Judge. BAM 600, p. 1. In preparation for the hearing, the Department is required to send to MOAHR and the client a hearing summary. BAM 600, pp. 9-10, 24. The hearing summary is required to include a clear, concise statement of the case action taken, a chronological summary of events, and citations to relevant law and policy, amongst other things. BAM 600, p. 10. Additionally, a hearing packet must be prepared to send along with the hearing summary. BAM 600, p. 10. The completed hearing packet must include, at a minimum, the relevant Notice of Case Action and a copy of all documents the Department intends to offer to support its action. BAM 600, p. 10.

At the hearing, the Department representative and client are tasked with presenting their respective cases with reference to the documents provided in the hearing packet or otherwise properly served under the Michigan Administrative Rules. BAM 600, p. 37. After hearing the evidence, the Administrative Law Judge has the duty to review the evidence presented and based on that evidence, determine whether the Department met its burden of proving that the challenged actions were taken in compliance with law and Department policy. BAM 600, p. 39.

Petitioner’s hearing request concerned Department action taken with respect to two programs: FAP and MA, and the MA portion was withdrawn at the hearing.² According to the hearing summary, the FAP action was due to a finding that Petitioner’s household income was over the limit for program eligibility. Furthermore, that action was effective on June 11, 2019, which, again according to the hearing summary, was also the date that Petitioner was notified of the action.

The Department’s hearing summary in this case states “Food and medical benefits were closed because the clients [sic] countable income exceeds the allowable limit for both program [sic].” The hearing summary states that the client was notified of the action on June 11, 2019 and that the effective date of the action was also June 11, 2019. Included in the hearing packet were the following documents: (1) Petitioner’s hearing request; (2) the deficient Benefits Notice discussed above; (3) a chart from RFT 250; and (4) a screenshot from Bridges titled “FAP – EDG Net Income Results.”

² As the hearing request was withdrawn with respect to MA, the Department’s failure to include the relevant Health Care Coverage Determination Notice turned out to be of less importance than it typically would be.

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 (April 2019), 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.

For many reasons, the Department's Benefits Notice failed to meet the basic requirements for it to constitute notice. First, it is not even clear when the document was sent. However, according to the hearing summary, it was sent on June 11, 2019. Second, it does not give any indication of the effective date of the change. However, according to the hearing summary, the effective date is also June 11, 2019. Thus, on that evidence alone, the action must be reversed as the notice of closure was not timely. Third, the notice fails to indicate any reasons why the action in being taken. However, the hearing summary indicates that it was because the Department determined that Petitioner's household income exceeded the limit for program eligibility. Notably, the hearing packet provided zero evidence substantiating the Department's conclusion that Petitioner's household had any income, let alone sufficient income to exceed the limit for eligibility. Finally, the Benefits Notice did not inform Petitioner of the means that she could challenge the action or the conditions under which benefits would be continued if a hearing was requested. Thus, the Benefits Notice completely fails to qualify as a "Notice."

As Petitioner was never provided with notice as its defined by law and Department policy, the Department was prohibited from taking negative action against her FAP benefits case. If the Department would like to take negative case action, it must provide timely notice. However, in the time since the untimely and insufficient notice was provided, Petitioner's household income has substantially changed, and the Department acknowledged that it received verification of the same. In sum, the Department's Benefits Notice is set aside, Petitioner's FAP benefits are reinstated, and the Department must act lawfully if it wishes to take any future action.

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 closed Petitioner's FAP benefits case, effective July 1, 2019.

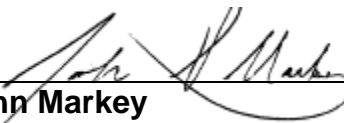
DECISION AND ORDER

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 FAP benefits case back to the date of closure;
2. Provide to Petitioner the FAP benefits Petitioner should have received if not for the closure that was made without providing notice and upon insufficient grounds;
3. Redetermine Petitioner's eligibility for FAP benefits going forward and provide appropriate notice for any changes to Petitioner's monthly allotment;
4. Promptly issue any supplements due; and
5. Notify Petitioner in writing of its decisions in a manner that complies with law and policy and is reasonably tailored to provide Petitioner with actual notice as to what is being done, why it is being done, and when it will be done.

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-Wayne-19-Hearings
M. Holden
D. Sweeney
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

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