



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: July 23, 2020
MOAHR Docket No.: 20-003343
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 July 15, 2020, from Trenton, Michigan. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Brian Francek, specialist.

ISSUE

The issue is whether MDHHS properly expunged Food Assistance Program (FAP) benefits issued to Petitioner.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. In or near February 2017, MDHHS issued an unspecified amount of FAP benefits to Petitioner related to a federal class-action lawsuit. MDHHS may have sent corresponding written notice of the FAP issuance to Petitioner.
2. In or near February 2018, MDHHS expunged the unspecified amount of FAP benefits issued to Petitioner one year earlier.
3. On [REDACTED] 2020, Petitioner requested a hearing seeking reissuance of expunged FAP benefits.

CONCLUSIONS OF LAW

The Food Assistance Program [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. MDHHS 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 compel MDHHS to reissue previously expunged FAP benefits. Exhibit A, pp. 4-7. Petitioner testified that MDHHS told him that he received approximately \$3,000 in FAP benefits in February 2017 and that the benefits were expunged one year later. MDHHS did not refute Petitioner's testimony; however, MDHHS also failed to present evidence verifying the amount, issuance date, or expungement date of benefits related to Petitioner's dispute. Given the limited evidence, it will be accepted that Petitioner received approximately \$3,000 in FAP benefits in or near February 2017.

Petitioner testified that he was also told by MDHHS staff that the expunged supplement was issued pursuant to a federal class action lawsuit related to wrongful denials of FAP benefits related to a client's criminal history. MDHHS again did not refute Petitioner's testimony, but again also did not present any evidence to verify it. Given the evidence, the expungement of FAP benefits disputed by Petitioner was likely related to the *Barry v. Lyons* lawsuit.

In *Barry v. Lyon* 834 F.3d 706 (2016), a federal court found that MDHHS wrongfully denied numerous FAP applicants because they were fugitive felons; the court also found that denial notices sent to such applicants were improper. To rectify its actions, MDHHS awarded supplements of FAP benefits, covering an approximate 2-year period, to clients who were wrongfully denied. On January 5, 2017, MDHHS sent notices to clients who were owed benefits under the *Barry* holding.¹ Shortly thereafter, MDHHS issued lump-sums of \$3,120 on the Bridge Cards of those adversely affected.² Petitioner appears to be one of the persons affected by the *Barry* lawsuit.

Petitioner testified that he was wholly unaware that MDHHS issued benefits to him in February 2017. Petitioner testified that he did not receive written notice of the issuance and never thought to check his Bridge Card because he was not a FAP recipient and/or he no longer had his Bridge Card. As a result, the benefits issued to Petitioner pursuant to *Barry* were expunged one year later due to non-use.

¹ <https://www.aclumich.org/en/news/barry-v-lyon-online-help-center-disqualification-public-benefits>

² *Id.*

FAP benefits which have not been accessed for 365 days will be expunged. BAM 400 (October 2015) p. 6. Once expunged, the client is no longer entitled to these benefits and the benefits cannot be replaced. *Id.*

MDHHS policy is clear that FAP benefits, once expunged, are not replaceable. Despite the unambiguous policy, consideration was given to Petitioner's unusual circumstances.

MDHHS sent written notices to persons entitled to a supplement of FAP benefits under *Barry*.³ Exhibit B, pp. 1-2. The notices informed clients that they would receive a supplement on their Bridge Card for FAP benefits which were wrongly denied.⁴ Presumably, MDHHS sent notices to clients based on the client's most recently reported address. As the lawsuit covered denials as far back as 2012, some clients may have changed addresses and not received written notice. Petitioner likely was such a client as he credibly testified that he never received written notice. Petitioner also never thought to check his Bridge Card for a supplement as he was unaware of the lawsuit.

Petitioner's testimony implied that MDHHS's alleged failure to issue written notice pursuant to *Barry* rendered any subsequent expungement to be improper. Ideally, MDHHS would have presented evidence that written notice was issued to Petitioner; MDHHS did not. For purposes of this decision, it will be accepted that MDHHS did not send Petitioner written notice of the *Barry* supplement. Even without evidence of written notice, MDHHS policy is unambiguous. Language such as clients are "no longer entitled" to expunged benefits and that they "cannot be replaced" makes clear that there are no circumstances when expunged benefits can be reissued. Given MDHHS's policy, it is not relevant whether Petitioner was issued written notice pursuant to *Barry*.

Not reissuing expunged FAP benefits to Petitioner is further supported by federal regulations. Under federal regulations, state agencies "shall expunge benefits that have not been accessed by the household after a period of one year". 7 CFR § 274.2(h)(ii)(2). No exceptions are explicitly authorized.

Given the evidence, MDHHS properly expunged FAP benefits issued to Petitioner pursuant to the *Barry* lawsuit. Thus, Petitioner is not entitled to reissuance of expunged benefits.

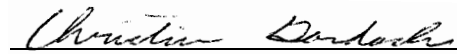
³ https://www.aclumich.org/sites/default/files/Notice_of_Lump_Sum_and_Opt_Out_Form.pdf

⁴ Additionally, clients were also informed of the right to opt-out of the lawsuit award.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly did not reissue expunged FAP benefits to Petitioner related to the *Barry* lawsuit. The actions taken by MDHHS are **AFFIRMED**.

CG/tlf



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

Via Email:

MDHHS-Macomb-20-Hearings
BSC4 Hearing Decisions
D. Sweeney
M. Holden
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
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[REDACTED]
[REDACTED]