



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 3, 2017
MAHS Docket No.: 16-019310
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, an in-person hearing was held on January 30, 2017, from Detroit, Michigan. The Petitioner was represented by [REDACTED] of [REDACTED] the Petitioner's Authorized Hearing Representative (AHR). The Petitioner did not appear. The Department of Health and Human Services (Department) was represented by Christine Leavell, Family Independence Manager, and Sharon Mitchell, Eligibility Specialist.

ISSUE

1. Did the Department properly process the Petitioner's Food Assistance Program (FAP) case?
2. Did the Department properly process the Petitioner's FAP case based upon the application filed by [REDACTED], which included Petitioner as a mandatory FAP group member?
3. Did the Department properly deny the Petitioner's application for Medical Assistance (MA)?

FINDINGS OF FACT

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

1. The Petitioner was an FAP recipient with his own case, DHHS Case No. [REDACTED]. The Petitioner's case was closed, effective February 1, 2017,

because he had been added as a group member in an FAP application filed December 18, 2016, by his live-in partner, [REDACTED] DHHS Case No. [REDACTED] Exhibits A and B.

2. On December 18, 2016, [REDACTED] filed an application for FAP for herself, her two children and [REDACTED]. Exhibit B. The Petitioner is the father of [REDACTED], and [REDACTED] is the mother. The Petitioner and [REDACTED] are not married. Exhibit B.
3. The Department issued a Notice of Case Action on December 26, 2016, closing the Petitioner's FAP benefits, effective February 1, 2017, for the following reasons: Group member does not meet program requirements; you requested that your assistance be stopped; and you did not give proof of information your local DHHS office asked for. See your Verification Checklist (VCL) for a list of items you were asked to provide. Exhibit A.
4. A caseworker at the Taylor MDHHS Office emailed the Grandmont MDHHS Office and requested that Petitioner's case be closed so that the FAP application for [REDACTED] could be processed. Exhibit C.
5. On January 11, 2017, the Department issued a Notice of Case Action approving [REDACTED] FAP application for the two minor children listed on the application January 1, 2017, through January 31, 2017, and denied the application, effective February 1, 2017. Exhibit D.
6. The Department denied the application for the following reasons: [REDACTED] You or a group member, failed to cooperate with child support requirements; verification of bank account savings, earned income payment, bank account checking, vendor prepaid debit card was not returned for [REDACTED]; income verification earned income payment not returned for [REDACTED]; compliance with Office of Child Support (OCS), and failure to contact the OCS for the two minor group children. Exhibit D.
7. The Petitioner applied for MA for himself on [REDACTED] 2015. Exhibit H.
8. The Department had no record of an application for MA for Petitioner and [REDACTED] [REDACTED] and [REDACTED]
9. The Petitioner completed a New Hire Client Notice on September 29, 2016, advising the Department of his employment and provided two paystubs. Exhibit F and Exhibit G. Two weekly paystubs were provided to the Department, dated September 9, 2016, in the amount of \$[REDACTED] and September 2, 2016, in the amount of \$[REDACTED].
10. The Department issued a Health Care Coverage Determination Notice (HCCDN) dated October 5, 2016, closing the Petitioner's MA case for Health Michigan Plan

(HMP), effective November 1, 2016, due to his income exceeding the income limit for the HMP. The Notice listed annual income of \$ [REDACTED] as the income used to determine health care coverage for the Petitioner. Exhibit E.

11. The Petitioner requested a timely hearing on [REDACTED], 2017, indicating that he was entitled to a full FAP allowance and asserting that all persons in his house are eligible for MA.

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 closed the Petitioner's FAP case when [REDACTED], the woman he was living with as a partner, filed an application for FAP benefits on [REDACTED], 2016. The application advised the Department that Petitioner was living in her household and that his child was also living in the household. The Department issued a Notice of Case Action on December 28, 2016, for Petitioner's FAP case closure, effective February 1, 2017. Exhibit A.

Thereafter, the Department denied the FAP application of [REDACTED] on January 11, 2017. The Notice of Case Action approved [REDACTED] FAP application for the two minor children listed on the application January 1, 2017, through January 31, 2017, and denied the application effective February 1, 2017. Exhibit D. The Department denied the application for the following reasons: [REDACTED], You or a group member failed to cooperate with OCS requirements; Verification of bank account savings, earned income payment, bank account checking, vendor prepaid debit card was not returned

for [REDACTED], income verification earned income payment not returned for [REDACTED]; compliance with OCS, and failure to contact the OCS for the two minor group children. Exhibit D.

Based upon the Notice of Case Action dated January 11, 2017, the Department denied the FAP case for the group for failure to verify information about [REDACTED], including his failure to verify bank account information, vendor prepaid debit card and earned income payments. Exhibit D. The Department did not provide any VCLs that it may have sent out, did not present evidence regarding when the verifications were sent and the VCL due date(s) for the information requested. In addition, the Department did not provide any OCS information to demonstrate non-cooperation and failure to verify cooperation.

Initially, it is determined that the Department properly closed Petitioner [REDACTED] case DHHS Case No. [REDACTED] (Petitioner was the sole group member) so that it could process the [REDACTED] 2016, FAP application filed by [REDACTED]. Based upon that application and confirmation at the hearing by Petitioner's AHR, the Petitioner was living with [REDACTED] and a minor child, [REDACTED] was listed as his child. Exhibit B.

Parents and their children **under** 22 years of age who live together **must** be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BAM 212, (January 1, 2017), p. 1.

See also: When deleting a member, an application the client files on their own, **or** the updated application of a group they join, is considered a change reported in writing by an eligible member of the former group. BAM 220 (January 2016), p. 4.

Thus, it is determined that the Department correctly closed Petitioner's prior FAP case where he was the only FAP group member.

The Department, however, did not demonstrate that it properly denied the [REDACTED] [REDACTED], 2016, FAP application. The Department must demonstrate by its evidence that based upon Department policy, the closure was in accordance with Department policy for failure to verify. In this case, the Department presented no evidence that the verifications were requested, presented no VCLs outlining the dates the information was due and the information requested, and thus, did not meet its burden of proof.

HMP Closure

The Department also issued an HCCDN, dated October 5, 2016, which found the Petitioner ineligible for HMP due to his income exceeding the income limit effective November 1, 2016. At the time of the closure, the Petitioner was the only person covered by the Notice; and he was an MA group of one person. Exhibit E. The

Department received a New Hire Client Notice on September 29, 2016, regarding Petitioner's employment with [REDACTED] Exhibit G. In addition, the Department provided evidence of two paystubs it received from the Petitioner for two weekly paystubs were provided to the Department dated September 9, 2016, in the amount of \$[REDACTED] and September 2, 2016, in the amount of \$[REDACTED]. Exhibit F. The Petitioner had originally applied for MA on [REDACTED] 2015, and was ongoing until the Department determined he was no longer eligible after receiving the New Hire Client Notice and the paystubs.

Based upon the new employment and the income reported, the Department determined that the Petitioner had excess income and was thus, ineligible for HMP MA coverage.

Medical Assistance is available (i) to individuals who are aged (65 or older), blind or disabled under Supplemental Security Income (SSI)-related categories, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for HMP coverage. BEM 105 (January 2016), p. 1.

Healthy Michigan Plan is a Modified Adjusted Gross Income (MAGI)-related MA category that provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the MAGI methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137 (January 2016), p. 1.

Petitioner, who is under age 64, not enrolled in Medicare and not the caretaker of any minor children, is potentially eligible for MA under the HMP. An individual is eligible for HMP if the Petitioner's household's income does not exceed 133% of the FPL applicable to the individual's group size. A determination of group size under the MAGI methodology requires consideration of the client's tax status and dependents. In this case, the evidence showed that Petitioner's household size for MAGI purposes is one. 133% of the annual FPL in 2016 for a household with one member is \$15,800. <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Petitioner's annual income cannot exceed \$15,800.

To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500 (January 2016), p. 3. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1. In determining an individual's eligibility for MAGI-related MA, 42 CFR 435.603(h)(2) provides that for current beneficiaries and "for individuals who have been determined financially-eligible for Medicaid using the MAGI-based methods . . . , a State may elect in its State plan to base financial eligibility either on current monthly household income. . . or income based on projected annual household income. . . for the remainder of the current calendar year."

At the hearing, the Department stated that it relied on the information contained in the verification of income Petitioner provided on September 29, 2016, to calculate Petitioner's projected annual income. (Exhibit C). Specifically, the Department stated that it considered monthly gross income of \$██████ based upon the Employment Budget Summary indicating that amount. Exhibit I. Using this monthly amount of \$██████ The Petitioner's monthly income when multiplied by 12 results in annual income of \$██████. Although not explained at the hearing by the Department, it appears the Department added the Petitioner's two pays for September together and determined the biweekly pay was \$██████ and then multiplied that by 2 to get monthly income of \$██████ a month. Based upon this calculation, Petitioner's income of \$██████ is in excess of the \$██████ limit for HMP eligibility. However, for reasons explained hereafter, the Department's determination is incorrect.

Effective January 1, 2014, when determining financial eligibility of current beneficiaries for MAGI-related MA, the State of Michigan has elected to base eligibility on projected annual household income and family size for the **remaining months of the current calendar year**. The State has also elected to use reasonable methods to include a prorated portion of a reasonably predictable increase in future income and/or family size and to account for a reasonably predictable decrease in future income and/or family size. (See Medicaid State Plan Amendment TN No: MI-13-0110-MM3 https://www.michigan.gov/documents/mdch/SPA_13_0110_MM3_MAGI-Based_Income_Meth_446554_7.pdf and http://www.michigan.gov/mdhhs/0,5885,7-339-73970_5080-108153--,00.html).

Therefore, because the Department calculated Petitioner's \$16,084 projected annual income based on a 12-month projection and not based on his projected annual income for the remaining months of the current calendar year (September 2016 through December 31, 2016), the four months remaining, the Department did not act in accordance with Department policy when it determined that Petitioner had excess income for HMP eligibility. His monthly income of \$1,340 for the remainder of the year would not have exceeded the HMP annual limit.

In addition, Department policy also requires that the Department determine whether the annual income is within 5% of the HMP income limit. Department policy in BEM 500 provides:

MAGI Related Medicaid
5 percent Disregard

- The 5 percent disregard is the amount equal to 5 percent of the Federal Poverty Level for the applicable family size.
- It is not a flat 5 percent disregard from the income.
- The 5 percent disregard shall be applied to the highest income threshold.

- The 5 percent disregard shall be applied only if required to make someone eligible for Medicaid. BEM 500 (October 1, 2016), p. 5

Applying the 5% disregard, the HMP limit becomes \$16,590 ($15,800 \times 1.05 = \$16,590$), which causes the Petitioner's income to be less than the HMP income limit when the disregard is considered.

Based upon the above analysis, it is determined that the Department improperly closed the Petitioner's MA based upon HMP.

The Petitioner's [REDACTED] 2017, hearing request asserts that he and his current group, which includes his live-together partner, [REDACTED] his child and her child are all eligible for Medicaid. Based upon the evidence presented, there is no support for this claim of eligibility for Medicaid. The Department could find no application for MA for Petitioner and these members. The only application was Petitioner's MA application which is discussed above and is reinstated. However, that application was closed at the time of the hearing request and thus only addresses Petitioner's eligibility at the time of the closure as the sole group member. Thus there is no basis to determine MA eligibility for anyone other than Petitioner.

DECISION AND ORDER

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 acted in accordance with Department policy when it closed the Petitioner's FAP, DHS Case No. 112223134.

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 the Petitioner's HMP medical assistance case due to his income exceeding the HMP limit.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed the [REDACTED] 2016, FAP application of [REDACTED] DHHS Case No. 122939063, for failure to verify information.

Accordingly, the Department's decision is

AFFIRMED with respect to the Closure of Petitioner's FAP Case No.112223134.

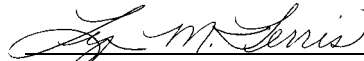
REVERSED with respect to closure of Petitioner's HMP MA case.

REVERSED with respect to the denial of the December 18, 2016, FAP application for failure to verify information.

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. The Department shall reinstate the Petitioner's HMP MA case effective November 1, 2016.
2. The Department shall re-register or re-instate the [REDACTED], 2016, FAP application DHHS Case No. 122939063 and process the case to determine FAP eligibility.
3. The Department shall issue an FAP supplement, if Petitioner is otherwise eligible in accordance with Department policy.

LMF/jaf



Lynn M. Ferris

Administrative Law Judge

for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

LaClair Winbush
17455 Grand River Ave
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