



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: December 20, 2018
MAHS Docket No.: 18-011922
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on December 18, 2018, from Lansing, Michigan. Petitioner represented herself. The Department of Health and Human Services was represented by Dawn Elford.

ISSUES

Did the Department of Health and Human Services (Department) properly determine the amount of Food Assistance Program (FAP) Petitioner was receiving?

Did the Department of Health and Human Services (Department) properly close Petitioner's Food Assistance Program (FAP) benefits?

Did Petitioner's request for a hearing entitle her to a hearing to determine whether the Department properly denied Direct Support Services (DSS)?

Did Petitioner's request for a hearing entitle her to a hearing to determine whether the Department properly denied Child Development and Care (CDC) benefits?

FINDINGS OF FACT

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

1. On September 29, 2018, the Department received Petitioner's Renew Benefits where she reported having multiple bank accounts. Exhibit A, pp 9-16.

2. On October 8, 2018, the Department sent Petitioner a Verification Checklist (DHS-3503) requesting verification of all bank accounts by October 18, 2018. Exhibit A, pp 17-18.
3. On October 9, 2018, the Department notified Petitioner that her Direct Support Services (DSS) application had been denied. Exhibit A, pp 35-36.
4. On October 25, 2018, the Department notified Petitioner that her Food Assistance Program (FAP) benefits would close effective November 1, 2018. Exhibit A, pp 19-20.
5. On November 15, 2018, the Department received Petitioner's request for a hearing. Exhibit A, pp 1-2.
6. On November 19, 2018, the Department notified Petitioner that she is approved for Child Development and Care (CDC) benefits. Exhibit A, pp 5-6.

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).

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (January 1, 2018), pp 3-4.

Michigan Department of Health and Human Services (MDHHS) assists families to achieve self-sufficiency. The primary avenue to self-sufficiency is employment. MDHHS and Partnership. Accountability. Training. Hope. (PATH) provides Direct Support

Services (DSS) to help families become self-sufficient. Department of Health and Human Services Bridges Eligibility Manual (BEM) 232 (October 1, 2018), p 1.

Direct Support Services (DSS) are goods and services provided to help families achieve self-sufficiency. DSS includes Employment Support Services (ESS) and Family Support Services (FSS) that directly correlates to removing an employment-related barrier. There is no entitlement for DSS. The decision to authorize DSS is within the discretion of the MDHHS or PATH program, based on local office funding. BEM 232, p 1.

Petitioner requested a hearing protesting the denial of DSS benefits. There is no entitlement to DSS benefits and the Department has the sole discretion of how funding for that program is allocated. Therefore, Petitioner is not entitled to DSS benefits and is also not entitled to a hearing with respect to the denial of those benefits.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. The Department administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

Petitioner requested a hearing protesting her child care provider's inability to bill for child care. The Department's representative testified that Petitioner has been approved for CDC benefits and Petitioner did not dispute that she has been approved for CDC benefits. Petitioner is not entitled to a hearing protesting the child care provider's inability to register and bill for services provided.

Clients must cooperate with the local office in determining initial and ongoing eligibility and this includes the completion of necessary forms. Department of Human Services Bridges Assistance Manual (BAM) 105 (January 1, 2018), p 8.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level when it is required by policy, required as a local office option, or information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. The Department uses documents, collateral contacts, or home calls to verify information. A collateral contact is a direct contact with a person, organization, or agency to verify information from the client. When documentation is not available, or clarification is needed, collateral contact may be necessary. Department of Human Services Bridges Assistance Manual (BAM) 130 (April 1, 2017), pp 1-10.

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 was an ongoing FAP recipient when the Department received her online Renew Benefits form. Based on the assets reported by Petitioner, the Department sent her a Verification Checklist (DHS-3503) requesting verification of all bank accounts by October 18, 2018. When the Department did not receive verification of the balance of all of Petitioner's bank accounts, or verification that the accounts had closed, the Department closed Petitioner's FAP benefits.

On November 15, 2018, the Department received Petitioner's request for a hearing, which states, "FAP amount has been incorrect the whole time." Petitioner is entitled to a hearing protesting the current level of FAP benefits. BAM 600.

The production of evidence to support the department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction. The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced.

McKinstry, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), Sec. 336, p. 946.

Although Petitioner's benefits closed due to her failure to provide information necessary to accurately determine her eligibility for FAP benefits, Petitioner retains the right to a hearing protesting the level of FAP benefits she was receiving before those benefits closed. The Department was aware, or should have been aware that Petitioner was not only protesting the closure of FAP benefits but the level of FAP benefits she was receiving.

This Administrative Law Judge finds that the Department failed to meet its burden of production to establish that Petitioner was receiving the appropriate level of FAP benefits before those benefits closed.

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 Petitioner's Food Assistance Program (FAP) benefits effective November 1, 2018.

Petitioner's request for a hearing did not raise an issue entitling her to a hearing with respect to Direct Support Services or her child care provider's inability to bill for services.

The Department failed to establish that it properly determined the level of Food Assistance Program (FAP) benefits Petitioner was receiving.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED** with respect to the closure of Food Assistance Program (FAP) benefits effective November 1, 2018.

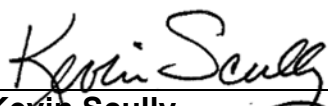
Petitioner's November 15, 2018, hearing request is **DISMISSED** with respect to Direct Support Services (DSS) and Child Development and Care (CDC) benefits.

The Department failed to establish that it properly determined the level of Food Assistance Program (FAP) benefits Petitioner was receiving before November 1, 2018.

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:

Initiate a determination of the Petitioner's eligibility for the Food Assistance Program (FAP) from August 1, 2018, through October 31, 2018, and issue Petitioner any retroactive benefits she may be eligible to receive, if any.

KS/hb



Kevin Scully
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) 763-0155; 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

Eileen Asam
701 S. Elmwood Suite 19
Traverse City, MI 49684

Grand Traverse County, DHHS

BSC1 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

L. Brewer-Walraven via electronic mail

Petitioner

[REDACTED]