



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

[REDACTED]
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MI [REDACTED]

Date Mailed: March 12, 2019
MAHS Docket No.: 19-000958
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 March 7, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by April Nemec, Hearings Facilitator (HF).

ISSUE

1. Is Petitioner's request for hearing as it relates to the Family Independence Program (FIP) timely?
2. If the FIP hearing request is timely, did the Department properly close the FIP case in June 2018?
3. Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits effective September 2018?
4. Did the Department properly close Petitioner's FAP benefits for January and February 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. On June 13, 2018, the Department issued a Notice of Case Action to Petitioner informing her of the denial of her FIP application effective July 1, 2018; hearing requests were due by September 11, 2018.

2. On September 5, 2018, a review and certification of the FAP case was completed which resulted in the closure of Petitioner's FAP benefits, effective October 1, 2018; but no Notice of Case Action was issued to Petitioner informing her of the closure.
3. On [REDACTED] 2018, Petitioner submitted a new application for FAP and Child Development and Care (CDC) benefits.
4. On the same day, the Department issued a Verification Checklist (VCL) to Petitioner requesting verification of her checking account, [REDACTED] [REDACTED] income information, and residential address by December 3, 2018.
5. On November 30, 2018, an interview was completed between the Department and Petitioner.
6. On December 3, 2018, the Department issued a Notice of Case Action to Petitioner pursuant to her expedited application informing her that she had been approved for FAP benefits for November 21, 2018, through November 30, 2018, in the amount of \$ [REDACTED] and \$ [REDACTED] for a group size of two in December 2018, each for a group size of two; she was also informed that to continue receiving benefits, she needed to provide the information requested on the Verification Checklist otherwise the case would close or be reduced.
7. On January 22, 2019, Petitioner requested a hearing disputing the repeated closure of her FAP benefits because she had not received a January 2019 or February 2019 benefit (February 2019 benefits were issued early due to ongoing federal budget concerns and the government shut down).
8. On January 24, 2019, the Department issued a Notice of Case Action to Petitioner informing her that her FAP case had closed effective January 1, 2019, because the Department had not received verification of her income, checking account, or residential address.

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).

Family Independence Program (FIP)

The FIP was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP

pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

Petitioner's hearing request indicates that she had applied for FIP benefits sometime around ██████ 2018. As a result of the request, the HF reviewed Petitioner's complete case file and all applications and closures over the last year. The Department has no record of a FIP application in ██████ 2018 and shows that the last FIP application was received on ██████ 2018. Petitioner's FIP case closed effective July 1, 2018, as a result of a Notice of Case Action dated June 13, 2018. Petitioner's hearing request was received on January 22, 2019. Policy provides that all hearing requests must be received by the local Department office within 90 days of the written Notice of Case Action. BAM 600 (April 2018), p. 6. Requests received outside of the 90-day period are denied for lack of jurisdiction. BAM 600 (April 2018), p. 8. The closure of Petitioner's FIP case occurred well beyond the 90-day period prior to Petitioner's request for hearing. Therefore, Petitioner's request for hearing as it relates to the FIP must be denied and DISMISSED. No further evaluation of Petitioner's eligibility in the FIP will be addressed by this decision.

Food Assistance Program (FAP)

The 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 also requested a hearing to dispute the closure of her FAP benefits effective October 1, 2018, as well as January and February 2019. As discussed above, ordinarily a request must be received within 90 days of the Notice of Case Action issued by the Department. However, the Department failed to issue a Notice of Case Action to Petitioner regarding the FAP closure effective October 1, 2018. The Department is required to issue a written notice to parties regarding the closure of FAP benefit. BAM 220 (January 2018), pp. 2, 4-5. A Notice of Case Action must specify the actions to be taken by the Department, the reasons for the action, the specific manual items relied upon which cite the legal basis for the action, an explanation of the right to request a hearing, and the conditions under which benefits are continued if a hearing is requested. BAM 220, pp. 2-3. Since the Department failed to issue a Notice of Case Action informing Petitioner of the closure, she was not adequately notified of the basis of the closure or her right to request a hearing within 90 days. The Department did not act in accordance with policy as it relates to the October 1, 2018, closure of her FAP case.

Petitioner also requested a hearing regarding the closure of her FAP case effective January 1, 2019. At the time of her hearing request, the Department had not yet issued a Notice of Case Action informing her of the closure of her benefits. However, Petitioner ordinarily receives FAP benefits on the 18th of each month but she did not

receive her January benefit on January 18th. In addition, the Department issued February 2019 benefits early, in January 2019, because of a mandate from the United States Department of Agriculture (USDA) Food and Nutrition Service (FNS) to issue February 2019 benefits early due to the pending and ongoing Federal government shutdown. Petitioner was aware that February 2019 benefits were supposed to be issued early, and she did not receive a February 2019 benefit. Therefore, she requested a hearing based upon the failure to receive a January and a February 2019 FAP benefit. Two days later, the Department issued the Notice of Case Action informing Petitioner of the closure of her FAP case for failure to return the requested verifications. The Department admits that it was late in processing the closure of Petitioner's case but believes that the end result (closure of Petitioner's case) was in accordance with Department policy. Since Petitioner was clearly aware of the closure because she had not received the benefits when she requested her hearing and because the Department rectified the problem two days after Petitioner's request for hearing, the Department's error was a harmless error. This decision will proceed to determine whether the Department properly closed Petitioner's FAP case.

On November 21, 2018, via a VCL, the Department had requested verification of Petitioner's checking account, [REDACTED] income, and residential address by December 3, 2018. Petitioner never returned the requested information. Policy provides that the Department is required to verify household circumstances including non-excluded income and assets at application, redetermination, and for reported changes. BAM 130 (April 2017), p. 1; BAM 400 (May 2018), p. 1; BEM 500 (July 2017), p. 13; BEM 220 (April 2018), pp. 1, 5-8; BAM 117 (January 2018, pp. 3-4. Since Petitioner had submitted an application on [REDACTED], 2018, the Department's request to verify assets and residential address were in accordance with Department policy. However, policy provides that income from the [REDACTED] in Service to [REDACTED] program is excluded from consideration of income and assets. BEM 501 (July 2017), p. 3. Since income from the [REDACTED] program is considered excluded, the income does not need to be verified. BEM 500, p. 13; BEM 501, p. 3. Therefore, the Department's request to verify Petitioner's [REDACTED] income is not consistent with policy.

When verifications are requested from a client, the Department is required to provide the client with 10 calendar days to respond. BAM 130, p. 7. Negative action notices are sent when the client indicates a refusal to provide a verification, or when the time period given has elapsed and the client has not made a reasonable effort to provide the requested verification. *Id.* Since Petitioner made no attempt to provide proof of her checking account asset information and her residential address, the Department's decision to close her FAP case was in accordance with policy.

While the Department concedes that it failed to timely process the FAP verification closure, a question arises as to whether the Department properly implemented the effectiveness date of the closure. When the Department closes a case, the Department is required to provide timely notice. BAM 220, p. 4. Timely notice must be mailed at least

11 days before the intended negative action takes effect. BAM 220, p. 5. The Department's decision to close Petitioner's FAP benefit was in accordance with policy; however, the effectiveness date of the closure was not. Since the Department issued its closure notice on January 24, 2019, the earliest benefit month that could be affected by the closure was March 2019 after application of the 11-day timely notice requirement.

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 determined that a closure of Petitioner's FAP case was appropriate based upon a failure to verify assets and residential address, but did not act in accordance with Department policy when it implemented the closure effective January 1, 2019, nor when it closed Petitioner's FAP case effective October 1, 2018, without notice, nor when it attempted to verify Petitioner's [REDACTED] income.

DECISION AND ORDER

Petitioner's Request for Hearing as it relates to the **FIP** is **DISMISSED**.

Accordingly, the Department's decision is **REVERSED** with respect to the Department's closure of Petitioner's FAP benefits effective October 1, 2018, without notice and with respect to the effectiveness date of the FAP closure resulting from a failure to verify assets and residential address.

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 and issue supplements to Petitioner for FAP benefits for October and November 2018 ONLY;
2. Reinstate and issue supplements to Petitioner for FAP benefits for January and February 2019 ONLY in accordance with Department policy; and,
3. Notify Petitioner in writing of the supplements to be issued.



AMTM/jaf

Amanda M. T. Marler
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 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

Tamara Morris
MDHHS-Genesee-UnionSt-Hearings

Petitioner

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[REDACTED] MI [REDACTED]

BSC4
B Sanborn
B Cabanaw
M Holden
D Sweeney