



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: June 14, 2019
MOAHR Docket No.: 19-001259
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, an in-person hearing was held on June 6, 2019, in Ypsilanti, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Sandra Bredlow, Eligibility Specialist, and Cathy Burr, Assistance Payments Supervisor. During the hearing, a 29-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-29.

ISSUES

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits case?

Did the Department properly close Petitioner's Medicare Savings Plan (MSP) benefits case, effective October 1, 2018?

Did the Department properly close Petitioner's Medicaid (MA) benefits case, effective October 1, 2018?

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, MSP, and MA benefits from the Department.

2. On August 4, 2018, the Department issued to Petitioner a Redetermination in order to gather relevant information regarding Petitioner's ongoing eligibility for benefits. Petitioner returned the completed Redetermination on [REDACTED], 2018. Exhibit A, pp. 13-20.
3. On October 3, 2018, the Department issued to Petitioner a Verification Checklist requesting information from Petitioner related to Petitioner's assets and bank accounts. The required proofs were due by October 15, 2018. Along with the Verification Checklist, the Department also sent an October 3, 2018 Verification of Assets form that was prefilled out and referred to Petitioner's account held at U of M Credit Union Savings and Checking. Both documents warned Petitioner that a failure to return the verifications would result in the closure of Petitioner's benefits cases. Exhibit A, pp. 22-25.
4. On November 14, 2018, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that his MA and MSP benefits cases were closing, effective October 1, 2018, as a result of Petitioner's alleged failure to provide verifications related to Petitioner's assets. Exhibit A, pp. 26-28.
5. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to actions taken with respect to Petitioner's FAP, MSP, and MA benefits.

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).

Petitioner was an ongoing recipient of FAP, MSP, and MA benefits from the Department. As part of the redetermination process, the Department required Petitioner to provide verifications to the Department related to his assets. Petitioner did not return the required verifications, which caused the Department to issue a Health Care Coverage Determination Notice closing Petitioner's MSP and MA benefits cases. Presumably, it caused the closure of Petitioner's FAP benefits case. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's actions with respect to his FAP, MSP, and MA benefits cases.

FAP

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, the Department provided no documentation related to Petitioner's FAP benefits case. During the hearing, the Department attempted to access the computer system in order to provide evidence of what the decision was and why it was taken. However, the Department was unable to access the system and could not provide any credible information related to Petitioner's FAP benefits case.

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 or Health Care Coverage Determination Notice 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 three programs: FAP, MA, and MSP. The hearing summary produced by the Department does not include any information with respect to FAP. The hearing packet produced by the Department has no documentation related to FAP. As the Department failed to prepare a sufficient hearing summary and packet and was unable to produce any documentation at the hearing, it remains unclear what actions were taken, when they were taken, and why they were taken.

As stated above, the Department bears the burden of proving that its actions were taken in compliance with law and policy when those actions are properly contested via a valid hearing request. Petitioner filed a valid hearing request contesting actions taken by the Department with respect to his FAP benefits cases. The Department did not produce either the contested action or any supporting documentation, as it is required to do in

preparation for the hearing. Thus, the action contested by Petitioner's hearing request with respect to his FAP benefits is reversed.

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 Petitioner's FAP benefits case.

MSP AND MA CLOSURE, EFFECTIVE OCTOBER 1, 2018

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.

There are three categories of MSP benefits including the Qualified Medicare Beneficiary (QMB), the Special Low Income Medicare Beneficiary (SLMB), and the Additional Low Income Medicare Beneficiary (ALMB). QMB pays Medicare premiums, and Medicare coinsurances, and Medicare deductibles. QMB coverage begins the calendar month after the processing month. SLMB pays Medicare Part B premiums. SLMB coverage is available for retro MA months and later months. ALMB pays Medicare Part B premiums provided funding is available. ALMB coverage is available for retro MA months and later months. BEM 165 (January 2018), pp. 2-4.

Unlike for the FAP issue, the Department provided supporting documentation to explain why and when it took action with respect to Petitioner's MA and MSP benefits cases. In support of its decision, the Department showed that Petitioner was issued a Verification Checklist on October 3, 2018 that required Petitioner to return information related to his assets by October 15, 2018 in order to avoid adverse action being taken against his benefits cases. Petitioner did not return the required information, causing the closures, effective October 1, 2018.

For both the MA and MSP programs involved, there are asset limits to eligibility. BEM 400 (October 2018), p. 1. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (April 2017), p. 1. Additionally, the Department must obtain verification when information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BAM 130, p. 1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. The Department allows the client 10 calendar days to provide the verification that is required. BAM 130, p. 7. If the time period for providing the verifications passes without having provided the verifications and the benefit period has expired, the case is to be closed as of the end of the benefit period. BAM 130, p. 8.

In this case, the benefit period for Petitioner's MA and MSP benefits cases expired as of the end of September 2018 without Petitioner completing the redetermination process by providing the required verifications. Petitioner acknowledged at the hearing that he received the Verification Checklist and that he did not return the required verifications in a timely manner. The form was clear and repeatedly warned Petitioner of the consequences of failing to timely provide the information. Petitioner was given numerous opportunities to provide the documentation but failed to do so. When the time period for providing the verifications passed and Petitioner had not made a reasonable effort to obtain them, the Department properly closed Petitioner's MA and MSP benefits cases, effective October 1, 2018.

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 MSP and MA benefits cases, effective October 1, 2018.

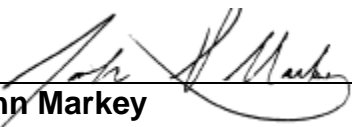
DECISION AND ORDER

Accordingly, the Department's decisions are **AFFIRMED IN PART** and **REVERSED IN PART**. The Department's closure of Petitioner's MA and MSP benefits cases, effective October 1, 2018, is affirmed. However, the action challenged by Petitioner with respect to his FAP benefits case 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 the closure;
2. If Petitioner is eligible for additional benefits, promptly issue to Petitioner a supplement;
3. If any relevant eligibility related factors remain unclear, inconsistent, incomplete, or contradictory, follow Department policy in obtaining verifications; and
4. Notify Petitioner in writing of its decisions.

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

Petitioner – Via First-Class Mail:

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