



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: March 26, 2019
MAHS Docket No.: 19-001274
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 March 14, 2019, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Nina Cage, specialist.

ISSUES

The first issue is whether MDHHS properly denied Petitioner's application for Medical Assistance (MA) for her spouse, Family Independence Program (FIP), and State Disability Assistance (SDA).

The second issue is whether MDHHS properly denied Petitioner's application for Food Assistance Program (FAP) and MA for herself.

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 January 11, 2019, Petitioner applied for SDA, FIP, FAP, and MA for herself and her spouse (hereinafter, "Spouse"). Petitioner reported a household which included Spouse, a daughter, and a foster child. Petitioner reported that she was disabled. Exhibit A, pp. 4-12.

2. On an unspecified date, MDHHS received documentation listing the following banks account balances for Petitioner: \$3,191.45 in savings and \$274.25 for checking. Exhibit A, p. 18.
3. On February 8, 2019, MDHHS denied Petitioner's application for MA for Petitioner due to excess assets. MDHHS denied MA for Spouse due to Spouse neither being disabled nor a caretaker to a minor child. Exhibit A, pp. 20-22.
4. On February 8, 2019, MDHHS denied Petitioner's application for SDA and FIP due to excess assets. MDHHS denied FAP to Petitioner due to Petitioner's alleged failure to verify information. Exhibit A, pp. 24-25.
5. As of February 8, 2019, MDHHS did not send Petitioner a Verification Checklist to Petitioner.
6. In determining Petitioner's assets, MDHHS did not factor whether Petitioner's monthly income was deposited into her bank accounts.
7. On [REDACTED], 2019, Petitioner requested a hearing to dispute the denial of SDA, FIP, MA for Spouse, FAP, and MA for Petitioner.

CONCLUSIONS OF LAW

The Family Independence Program (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a denial of FIP and SDA. A Notice of Case Action dated February 8, 2019, stated that each cash assistance program was denied due to excess assets.

Assets must be considered in determining eligibility for FIP and SDA. BEM 400 (January 2019), p. 1. Cash assets are among the assets countable for SDA and FIP. *Id.* The cash asset limit for FIP and SDA is \$3,000. *Id.*, p. 5

In determining Petitioner's asset eligibility for FIP and SDA, MDHHS exclusively relied on a bank document from Petitioner which listed Petitioner's savings and checking account balances of \$3,191.45 and \$274.25, respectively. Exhibit A, p. 18. The method used by MDHHS to count Petitioner's assets was improper for two reasons.

Lump sums and accumulated benefits are assets starting the month received. *Id.*, p. 16. A person might receive a single payment that includes both accumulated benefits and benefits intended as a payment for the current month. *Id.* MDHHS is to treat the portion intended for the current month as income. *Id.*

Petitioner testified that she and a child receive monthly RSDI which is directly deposited into one of her bank accounts; Petitioner's testimony was credible as most RSDI recipients receive their income through direct deposit. If Petitioner's testimony is correct, then MDHHS should have subtracted the amount of the household's RSDI from Petitioner's bank balances because MDHHS cannot count income as an asset for the same benefit month. MDHHS testimony acknowledged that no consideration was given to whether Petitioner's or her child's RSDI was part of their account balances. Notably, Social Security Administration award letters listed Petitioner's and her child's net RSDI as \$905 and \$433, respectively. Exhibit A, pp. 15-16. Thus, if MDHHS had excluded the household's monthly RSDI net income of \$1,338, Petitioner would have been asset eligible for FIP and SDA after the income was subtracted from the \$3,465.70 assets counted by MDHHS. A second reason exists for finding that MDHHS improperly counted Petitioner's assets.

MDHHS is to determine asset eligibility prospectively using the asset group's assets from the benefit month. *Id.*, p. 3. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. *Id.*

MDHHS acknowledged using Petitioner's verified balance as of an unspecified date to calculate Petitioner's assets. MDHHS did not consider Petitioner's lowest daily bank balance in determining Petitioner's asset-eligibility for cash assistance. The method used by MDHHS may have been appropriate had MDHHS requested bank statements from Petitioner and Petitioner only returned documentation of balances from a single unspecified date. As it happened, MDHHS never officially requested verification of Petitioner's bank balances. For a proper request, MDHHS should have mailed Petitioner a VCL requesting bank statements. BAM 130 (April 2017), p. 3. As MDHHS did not mail Petitioner a VCL, MDHHS cannot claim that proper reliance was placed on Petitioner's submission of a document listing bank balances from an unspecified date.

It is found that MDHHS improperly counted Petitioner's assets. Thus, the denial of FIP and SDA were improper.

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner also requested a hearing to dispute a denial of FAP benefits. A Notice of Case Action dated February 8, 2019, stated that Petitioner's application was denied due to Petitioner's failure to verify information. MDHHS testimony clarified that Petitioner failed to verify an unreported savings account.

MDHHS testimony acknowledged that a VCL was not mailed to Petitioner before MDHHS denied Petitioner's application for FAP benefits. MDHHS alleged that Petitioner was verbally told of the need for verification and contended that verbal notice is sufficient.

For all programs, MDHHS is to tell the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. MDHHS is to use the DHS-3503, Verification Checklist (VCL), to request verification. *Id.* MDHHS is to allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. *Id.*, p. 7. MDHHS is to send a negative action notice when:

- The client indicates refusal to provide a verification, or
- The time period given has elapsed and the client has not made a reasonable effort to provide it. *Id.*

MDHHS policy clearly requires written notice of needed verifications by use of a VCL. Thus, MDHHS' contention that verbal notice of the need to submit verifications is not persuasive.

Given the evidence, MDHHS failed to provide Petitioner with proper notice of a need to verify assets. Thus, the denial of FAP benefits due to Petitioner's alleged failure to verify assets was improper.

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner also requested a hearing to dispute a denial of MA benefits for Spouse. A Health Care Coverage Determination Notice stated that Spouse was not eligible for MA benefits due to not meeting any eligible categories, including those for being a caretaker of minor children.

Medicaid is also known as Medical Assistance (MA). BEM 105 (April 2017), p. 1. The Medicaid program includes several sub-programs or categories. *Id.* To receive MA under a Supplemental Security Income (SSI)-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MICHild and Healthy Michigan Plan is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

Persons may qualify under more than one MA category. *Id.*, p. 2. Federal law gives them the right to the most beneficial category. *Id.* The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. *Id.*

As of Petitioner's application date, Petitioner reported Spouse to be a caretaker of minor children. As a caretaker to minor children, Spouse is potentially eligible for Medicaid through MAGI-related categories. MDHHS, without explanation, failed to consider Spouse's Medicaid eligibility under MAGI-related categories.

Based on the evidence, MDHHS failed to consider Spouse's potential Medicaid eligibility due to his status as a caretaker to minor children.¹ The denial of Spouse's Medicaid was improper

Lastly, Petitioner requested a hearing concerning her Medicaid eligibility. A HCCDN stated that Petitioner was ineligible due to excess assets.

As of Petitioner's application date, Petitioner was reported to be a caretaker to minor children. As a caretaker to minor children, Petitioner is potentially eligible for Medicaid through MAGI-related categories.²

There is no asset test for MAGI-related Medicaid categories. *Id.*, p. 3. MAGI-related MA cannot be denied even if a client refuses to provide asset information for a program with an asset test. *Id.*

MDHHS cannot deny a client for MAGI-related Medicaid due to assets. Thus, the denial of Petitioner's MA due to excess assets was improper.

Petitioner was reported to be a disabled individual. As a disabled individual, Petitioner is also potentially eligible for Medicaid under SSI-related Medicaid categories. The SSI-Related MA asset limit is \$3,000 for a married couple. *Id.*, p. 8.

¹ Potential eligibility does not equate to eligibility.

² The denial notice specifically denied HMP (a MAGI-related category) due to excess income. A denial based on excess income may be proper but was not considered in this decision as MDHHS failed to consider Petitioner's eligibility under MAGI-related categories. Petitioner will not lose her hearing rights to dispute the denial of HMP benefits as MDHHS will be ordered to reconsider eligibility for all MAGI-related categories.

For all programs, funds cannot be counted as income and assets in the same month. BEM 500 (July 2017) p. 7. MDHHS is to not include funds entered as income in asset amounts entered into the MDHHS database. *Id.* For SSI-related MA, asset eligibility exists when the asset group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400 (July 2017) p. 7.

The same problems cited in the analysis of Petitioner's eligibility for SDA and FIP also plague MDHHS' denial of Petitioner's eligibility for Medicaid under an SSI-Related category. MDHHS did not calculate Petitioner's assets with proper regard whether Petitioner's group's RSDI were deposited into Petitioner's accounts or whether Petitioner had a lower daily balance in her accounts. Thus, MDHHS also improperly denied Petitioner's Medicaid eligibility.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's application for SDA, FIP, FAP, MA for Petitioner, and MA for Spouse. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reregister Petitioner's application dated January 11, 2019;
- (2) Process Petitioner's application subject to the following findings:
 - a. MDHHS improperly failed to consider Petitioner's lowest daily balance and monthly RSDI in determining Petitioner's eligibility for FIP and SDA;
 - b. MDHHS improperly failed to request verification of Petitioner's assets in determining Petitioner's FAP eligibility;
 - c. in determining Spouse's MA eligibility, MDHHS failed to factor that Petitioner reported that Spouse was a caretaker to minor children;
 - d. MDHHS improperly factored Petitioner's assets in determining Petitioner's MA eligibility; and
- (3) Issue a supplement of any benefits improperly not issued.

The actions taken by MDHHS are **REVERSED**.

CG/



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 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

Via Email:

MDHHS-Wayne-15-Hearings
B. Sanborn
B. Cabanaw
M. Holden
D. Sweeney
D. Smith
EQAD
L. Karadsheh
BSC4- Hearing Decisions
MAHS

Petitioner – Via First-Class mail:

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