



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: October 23, 2019
MOAHR Docket No.: 19-008445
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, a telephone hearing was held on October 21, 2019 from Detroit, Michigan. Petitioner appeared and was represented by attorney Cheryl Cameron. The Department of Health and Human Services (Department) was represented by Assistant Attorney General [REDACTED]. Also appearing on behalf of the Department was [REDACTED] Hearings Facilitator.

ISSUE

Did the Department properly determine Petitioner's eligibility for Medicaid (MA) benefits?

Did the Department properly determine Petitioner eligibility for Food Assistance Program (FAP) benefits, effective August 1, 2019, ongoing?

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 MA and FAP benefits from the Department.
2. On March 15, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that he was ineligible for MA benefits, effective September 1, 2018, ongoing.

3. On June 26, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that his FAP case was closing, effective August 1, 2019, as a result of the Department's finding that the value of Petitioner's countable assets exceeded the limit for program eligibility.
4. On July 24, 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's actions with respect to Petitioner's MA and FAP benefits cases.
5. At the beginning of the hearing, Petitioner's attorney indicated that she wished to withdraw the hearing request with respect to MA. The Department did not object to the request for withdrawal.

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).

In this case, Petitioner object to Department actions taken with respect to Petitioner's MA and FAP benefits cases.

MA BENEFITS

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.

Petitioner's July 24, 2019 request for a hearing disputed Department actions taken with respect to Petitioner's MA benefits case. At the hearing, Petitioner's attorney indicated that all issues with respect to Petitioner's MA benefits had been resolved to Petitioner's satisfaction and that Petitioner wished to withdraw the hearing request with respect to those benefits. As the issue leading to the hearing request has been resolved, Petitioner's request to withdraw the hearing request with respect to MA is approved. Accordingly, Petitioner's hearing request is **DISMISSED** with respect to the MA benefits.

FAP BENEFITS, EFFECTIVE AUGUST 1, 2019

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's FAP benefits were closed, effective August 1, 2019, as a result of the Department's finding that the value of Petitioner's countable assets exceeded the limit for program eligibility. The Department's finding was premised on a finding that assets held in a trust were countable assets for the purposes of determining Petitioner's eligibility for FAP benefits. Petitioner objected to that finding and argued that the trust assets should not have been countable.

In order to be eligible for FAP benefits, a group must have countable assets of \$5,000 or less. BEM 400 (July 2019), p. 5. In general, an asset is considered available to an individual if that individual has the legal right to use or dispose of the asset. BEM 400, p. 10. For assets held in a trust, the trust principal and any income retained by the trust are considered unavailable if all of the following conditions apply: (1) the trust arrangement is not likely to end during the benefit period; (2) no asset group member has the power to revoke the trust or change the name of the beneficiary during the benefit period; and (3) the trustee administering the trust is either (i) a court or an institution, corporation, or organization not under the direction of ownership of any asset group member or (ii) an individual appointed by the court who is restricted by the court to use the funds solely for the benefit of the beneficiary. BEM 400, pp. 29-30.

At the outset of the hearing, the parties agreed that the funds held in the trust were counted by the Department in determining Petitioner's asset eligibility for FAP benefits and that the Department's decision to do so caused Petitioner to be deemed ineligible due to having excess countable assets. The parties further agreed that the Department's determination concerning the trust in question was erroneous and subsequently reversed by the Department. The parties jointly requested an order reinstating Petitioner's FAP benefits case back to August 1, 2019, if Petitioner is otherwise eligible.

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 determined Petitioner's eligibility for FAP benefits, effective August 1, 2019, ongoing.

DECISION AND ORDER

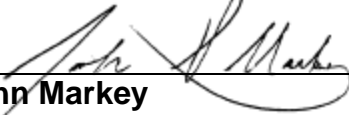
Petitioner's hearing request with respect to Petitioner's MA benefits is **DISMISSED**.

The Department's decision with Petitioner's FAP benefits 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 August 1, 2019;
2. Determine Petitioner's eligibility for FAP benefits, effective August 1, 2019, ongoing;
3. If Petitioner is otherwise eligible for FAP benefits, ensure that a prompt supplement is issued; and
4. Notify Petitioner in writing of its decisions.

JM/tm



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

Counsel for Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Counsel for Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED] [REDACTED]
[REDACTED]

cc: FAP: M. Holden; D. Sweeney
ME—D. Smith; EQADHShearings
Macomb County AP Specialist (4)