



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], MI [REDACTED]

Date Mailed: October 9, 2019
MOAHR Docket No.: 19-008507
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 administrative hearing was held on October 1, 2019 at the Owasso County Department of Health and Human Services (DHHS) in Owasso, Michigan. Petitioner was represented by attorney Sarah Bouck, Attorney with LSSCM. The Department of Health and Human Services (Department or Respondent) was represented by Assistant Attorney General (AAG) Elizabeth Husa Briggs.

Petitioner personally appeared and testified. No other witnesses appeared.

Respondent called the following witnesses:

Carrie Weeks, FIM
Jessica Schu, ES Worker.

Respondent's Exhibit A.17 was offered and admitted into evidence.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case and properly propose to close Petitioner's FAP and properly propose to close Petitioner's Medicaid (MA) and MA cost sharing (MCS) cases?

FINDINGS OF FACT

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

1. At all relevant times Petitioner has been a FAP, MA, and MCS beneficiary.

2. In June 2019 Petitioner's FAP was due for a 1-year mid certification of the 2-year certification; Petitioner's MA and MCS programs were due for a full review.
3. On June 4, 2019, Respondent issued a Verification Checklist for all programs with a June 21, 2019 due date. Petitioner requested an extension to return verifications which was denied per policy for the Food Assistance Program. The due date for the MA and MCS programs was extended the due date to July 7, 2019.
4. On June 24, 2019, the Department received a [REDACTED] bank account verification for the wrong account. On June 25, 2019, and July 1, 2019, the Department received a [REDACTED] bank statement. On June 25, 2019, the Department received a life insurance statement that was dated September 16, 2014, deemed insufficient.
5. On July 11, 2019, Respondent issued a Notice of Case Action informing Petitioner that his FAP will close effective August 1, 2019, and ongoing because Petitioner did not return verification of "Bank Account Saving". As authority the Department cited ERM 101, and 103, State Emergency Relief policy.
6. On July 11, 2019, Respondent issued a Health Care Coverage Determination Notice informing Petitioner that his health care coverage will close August 1, 2019, because Petitioner failed to return verification of "Bank Account Saving". The notice does not specifically reference HCS but states twice that Petitioner was denied. The first cites BEM 400; the second denial on the notice cites State Emergency policy, ERM 101 and 103.
7. On July 14, 2019, Petitioner filed a hearing request. The Department reinstated the MA and the MCS due to a timely hearing request pending the outcome of the administrative hearing.
8. The Department issued two notices to Petitioner with the wrong phone number for his worker printed on both notices. Petitioner attempted to reach his worker two times and left a voice mail pursuant to a third phone call at a central line access that he has been unable to contact her at the phone the number on the notices. The worker received the message but did not act on it.
9. On June 15, 2019, Respondent issued a Verification Checklist to Petitioner to complete a "statement from insurance company" or a "DHS-4786 Life Insurance Verification". The DHS-4786 form was not included in the letter and Petitioner attempted to contact his worker unsuccessfully at the non-working phone number on the notices sent to Petitioner. Respondent failed to include the checklist in its evidentiary packet.
10. Petitioner delivered letters and communications to the Department on June 21, 2019, (a 1 page type written letter), on June 24, 2019, (a 3 page type written letter), life insurance letters on June 25, 2019, and August 12, 2019, a type written letter to his worker on June 1, 2019, and a July 1, 2019, hand written letter to his worker.

11. Petitioner had communication with his worker's supervisor due to being unable to reach his worker at the printed form number on the Department forms.

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).

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.

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.

Applicable federal regulations regarding the FAP program are found at 7 CFR 273.2. Applicable federal MA regulations are found at 42 CFR 435.913(a), 916(a), and (b). Applicable policy is found at BAM 105 and 130. Applicable policy to the case here states in part:

DEPARTMENT POLICY

All Programs

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements....

...A **collateral contact** is a direct contact with a person, organization or agency to verify information from the client. It might be necessary when documentation is not available or when available evidence needs clarification.

The client must name suitable collateral contacts when requested. Assist the client to designate them. The local

office is responsible for obtaining the verification. If the contact requires the client's signed release, use the DHS-27, Release of Information, (DHS-20, Verification of Resources, for inquiries to financial institutions), and specify on it what information is requested.

Obtaining Verification

All Programs

Tell the client what verification is required, how to obtain it, and the due date; see **Timeliness of Verifications** in this item. Use the DHS-3503, Verification Checklist (VCL), to request verification.

The client must obtain required verification, but the local office must assist if they need and request help.

If neither the client nor the local office can obtain verification despite a reasonable effort, use the best available information. If **no** evidence is available, use your best judgment....

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.

BAM 130.

As a beneficiary of a benefit welfare services case, the party alleging eligibility has the burden of proof by a preponderance of evidence. Here, that burden falls on Petitioner. The Department has the burden of going forward.

This case is factually intensive. The record contains multiple requests, multiple verifications, and multiple communications by Petitioner with the Department. In addition, there were multiple attempts by Petitioner to follow the instructions by the Department without success--the incorrect phone number, the insurance verification which the Department indicated was not correct, the bank statement Petitioner submitted which the Department indicated was for the wrong account. Furthermore, when Petitioner finally found a way to reach his worker and leave a voice mail, she acknowledged that she received it but dismissed it as she believed that Petitioner was referring to an earlier point in time despite his actual representations.

In addition, here Petitioner received a specific verification checklist on June 15, 2019, requesting "statement from insurance company" and "DHS-4786 Life Insurance

Verification". Since this checklist failed to include the DHS-4786 form, Petitioner spent much time attempting to obtain the form, and attempting to contact his worker to regarding the missing form. At the administrative hearing, the Department initially represented that it had no knowledge or information about this checklist. Later in the hearing the Department testified that the Department did not issue this checklist, rather, the computer issued it due to a mass update.

BAM 130 states that the Department is to send a negative action notice when the client refuses to provide the verifications requested, or when the time period has lapsed, and the client has not made a reasonable attempt to obtain the verification. Here, the evidence of records supports finding that Petitioner did not refuse to obtain the verifications requested, and in fact on numerous occasions contacted the Department in an attempt to clarify what was due and how to obtain it. Multiple communications by Petitioner support the same: see Exhibits A.17, Exhibit 6, 7, 9, 10, 11, 12, 13a, 13b, and 13c, as well as the numerous voice mails. Based on this evidence, it cannot be said that Petitioner did not make a reasonable effort to obtain the verifications requested by the Department.

In addition, policy requires the Department to assist individuals with 3rd party contacts when an individual has difficulty obtaining the verifications. Clearly Petitioner was experiencing this difficulty. Moreover, the Department's communications failed to clearly specific how to go about obtaining the verifications—the phone number printed on the Department notices was repeatedly incorrect. And even when Petitioner contacted the Department and finally found a voice mail for his worker, the worker testified that she did not understand Petitioner to mean that he was having difficulty reaching her (as he indicated) but that he meant that he had previously had difficulty reaching her, so she did not address the problem.

Regarding the Department's position that it was not responsible for the contents of the verification checklist sent June 15, 2019, the Department's argument was nonsensical. The Department witness testifies at an administrative hearing as an agent of the Department. A witness is charged with the duty of going forward to present the evidence used in taking the action being disputed. The Department cannot meet its burden of going forward by arguing that a computer took the action; the Department is responsible for overseeing communications whether hand selected or automated by its computer systems.

In addition, two notices herein cited ERM policy. There was no State Emergency Relief issue(s). The notices failed to meet statutory federal and state notice requirements and failed to give Petitioner notice of the authority for action(s).

Under these facts, the Department has not followed its policy found in BAM 130. Under these facts, the Department's determination cannot be upheld.

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 did not

clearly act in accordance with Department policy when it closed Petitioner's FAP case and proposed to close Petitioner's MA and MSC cases.

DECISION AND ORDER

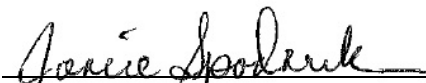
Accordingly, the Department's decision is **REVERSED**.

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. Delete the negative actions taken and proposed as to Petitioner's FAP, MA and MSC cases, and
2. Reinstate any case closures, and
3. Issue a DHS-176 which clearly states what verification is due, when it is due, with a working phone number for Petitioner to call if he needs assistance, and
4. Assist Petitioner with any 3rd party verification request, and
5. Reprocess Petitioner's beneficiary cases, and
6. Issue written notice to Petitioner of the outcome of reprocessing Petitioner's cases, and
7. Issue any supplemental benefits, and
8. Petitioner shall retain a right to an administrative hearing for 90 days from the date of the new notice.

IT IS SO ORDERED.

JS/hb



Janice Spodarek
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

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Marci Walker
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Shiawassee County, DHHS

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Petitioner

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