



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: October 11, 2019
MOAHR Docket No.: 19-009887
Agency No.: ██████████
Petitioner: ██████████

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 10, 2019 from Detroit, Michigan. Petitioner appeared and was represented by ██████████ Authorized Hearing Representative. The Department of Health and Human Services (Department) was represented by Timika Harris, Assistance Payments Supervisor. During the hearing, a 14-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-14.

ISSUE

Did the Department properly determine Petitioner's eligibility for the Medicare Savings Program (MSP)?

Did the Department properly determine Petitioner's eligibility for Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. In ██████ 2019, Petitioner submitted to the Department an application for MSP benefits.
2. In July 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was eligible for MSP benefits, effective August 1, 2019, ongoing. That notice further informed Petitioner that she

was not eligible for MSP benefits for the month of July 2019 because of the Department's determination that Petitioner is not eligible for MSP benefits during the month of application.

3. On [REDACTED] 2019, Petitioner submitted to the Department another application for benefits, including MSP and FAP benefits. On the application and in other communications with the Department, Petitioner informed the Department that she was homeless but regularly had housing costs associated with obtaining a place to sleep or clean up.
4. On August 6, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that she was eligible for \$18 in FAP benefits for the period from August 2, 2019 through August 31, 2019, and \$19 per month, effective September 1, 2019, ongoing. The Department did not factor in any housing costs nor did it attempt to verify Petitioner's assertion that she had housing costs. Exhibit A, pp. 13-14.
5. On August 6, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was eligible for MSP benefits, effective September 1, 2019. The notice further informing Petitioner that she was not eligible for MSP benefits for the month of August 2019 because of the Department's determination that Petitioner is not eligible for MSP benefits during the month of application. Notably, the result of this decision was to strip the MSP benefits from Petitioner that had already been approved. Exhibit A, pp. 8-9.
6. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's actions with respect to her MSP and FAP 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).

In this case, Petitioner objects to the Department's determination of her eligibility for FAP and MSP benefits.

FAP ELIGIBILITY

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 applied for FAP benefits on [REDACTED], 2019. On the application and in other communications with the Department, Petitioner asserted that she had housing costs. The Department did not take any action to verify that assertion. Instead, the Department seemingly ignored Petitioner's assertions and factored into Petitioner's FAP budget no housing costs.

The Department factors certain expenses into the FAP budget to determine benefit levels. BEM 554 (August 2017), p. 1. Shelter expenses, including housing expenses such as rent, are considered if they meet certain criteria. BEM 554, p. 13. Amongst those criteria are the requirements that someone in the FAP group has the responsibility to pay for the service in money and that any required verifications are provided. BEM 554, p. 1. Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130 (April 2017), p. 1. Verifications are required under many different circumstances, including when an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BAM 130, p. 1.

Petitioner's assertion that she was responsible for housing costs created a situation where an eligibility factor was unclear or incomplete. At that point, the Department had an obligation to follow the verification procedure clearly outlined in BAM 130. By failing to do so and instead simply factoring in a housing cost of \$0, the Department deprived Petitioner of the opportunity to verify an expense that could have resulted in Petitioner being found eligible for a higher level of FAP benefits than she was.

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 act in accordance with Department policy when it determined Petitioner's eligibility for FAP benefits, starting August 2, 2019.

MSP ELIGIBILITY

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. The Department of Community Health notifies the Department of Human Services if funding is available. ALMB coverage is available for retro MA months and later months. BEM 165 (January 2018), pp. 2-4. Full-coverage QMB eligibility cannot be retroactive. BAM 115 (October 2018), p. 12.

Petitioner applied and was approved for MSP benefits, effective [REDACTED] 2019. For whatever reason, Petitioner submitted to the Department another application for MSP benefits in [REDACTED] 2019. Shortly after submitting that application, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was eligible for MSP benefits, effective September 1, 2019. The notice further informed Petitioner that she was not eligible for MSP benefits for August 2019 as it was the month of application. The Department representative confirmed that Petitioner did not receive the MSP benefits for August 2019. Effectively, the Department's processing of Petitioner's [REDACTED] 2019 application resulted in Petitioner's already approved MSP benefits being stripped from her for the month of August 2019.

During the hearing, the Department witness conceded that the Department's action in stripping Petitioner's MSP benefits for the month of August 2019 was erroneous as Petitioner had already been approved for those benefits just the month prior. Petitioner was eligible for MSP benefits for August 2019 and was notified of that eligibility only weeks before they were stripped away. The Department must reinstate those benefits as they were stripped without timely notice as required by BAM 220 (October 2018), pp. 3-4.

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 act in accordance with Department policy when it stripped Petitioner's eligibility for MSP benefits for the month of August 2019.

DECISION AND ORDER

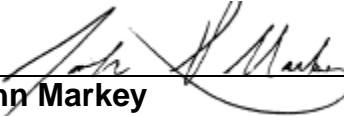
Accordingly, the Department's decision is **REVERSED**.

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. Reinstate Petitioner's eligibility for MSP benefits back to August 1, 2019 and ensure that a supplement is promptly issued;
2. Follow Department policy with respect to requesting, receiving, and processing verifications related to Petitioner's asserted housing expenses;
3. Redetermine Petitioner's FAP eligibility back to the date of application;

4. If Petitioner is eligible for additional FAP benefits, ensure that a prompt supplement is issued; and
5. 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-Oakland-4-Hearings
M. Holden
D. Sweeney
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

**Petitioner –
Via First-Class Mail:**

████████████████████
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**Authorized Hearing Rep. –
Via First-Class Mail:**

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