



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: November 8, 2019
MOAHR Docket No.: 19-010959
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 November 6, 2019, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Shaumanique Bright, Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP), Medical Assistance (MA) and Medicare Savings Program (MSP) benefit 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. Petitioner was an ongoing FAP, MA and MSP benefit recipient.
2. On [REDACTED], 2019, Petitioner completed a redetermination related to her FAP, MA and MSP benefit cases (Exhibit A, pp. 1-8).
3. On July 20, 2019, an asset detection was completed and located two checking accounts in Petitioner's name at [REDACTED] and [REDACTED] (Exhibit A, pp. 9-10).
4. On July 22, 2019, the Department sent Petitioner a Verification Checklist (VCL) requesting verification of her checking accounts (Exhibit A, pp. 11-12).

5. On July 31, 2019, Petitioner submitted verification of a checking account at Flagstar Bank (Exhibit A, p. 13).
6. On August 5, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) informing her that her MA and MSP benefit cases were closing effective September 1, 2019, ongoing (Exhibit A, pp. 14-18).
7. On August 5, 2019, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefit case was closing effective September 1, 2019, ongoing (Exhibit A, pp. 21-25).

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.

In this case, Petitioner was an ongoing FAP, MA and MSP benefit recipient. On [REDACTED], 2019, Petitioner submitted a redetermination related to her FAP, MA and MSP benefit cases. On July 20, 2019, asset detection information was received by the Department showing Petitioner had checking accounts in her name at [REDACTED] and [REDACTED]. On July 22, 2019, the Department sent Petitioner a VCL requesting verification of her checking accounts. Proofs were due by August 1, 2019.

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (April 2017), 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. For FAP cases, the Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is required. BAM 130 (April 2017), p. 7. For MA

cases, the Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is required. BAM 130 (April 2017), p. 7. If the client cannot provide the verification despite a reasonable effort, the Department will extend the time limit up to two times. BAM 130, p. 8. Verifications are considered to be timely if received by the date they are due. BAM 130, p. 7. For electronically transmitted verifications (fax, email or Mi Bridges document upload), the date of the transmission is the receipt date. BAM 130, p. 7. Verifications that are submitted after the close of regular business hours through the drop box or by delivery of a Department representative are considered to be received the next business day. BAM 130, p. 7. The Department sends a negative action notice when: the client indicates a 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, p. 7.

The Department testified that Petitioner submitted verification of a checking account at [REDACTED] on July 31, 2019. Petitioner did not submit verification of her checking accounts at [REDACTED] or [REDACTED]. As a result, the Department sent Petitioner notice that her MA, MSP and FAP benefit cases were closing. On September 23, 2019, Petitioner submitted verification that the [REDACTED] account was an estate account (Exhibit A, p. 26). The Department stated that the verification did not contain the amount of funds in the account, nor did Petitioner submit verification of the account at [REDACTED]. As such, Petitioner's benefit cases were not reinstated.

Petitioner testified that she was not initially aware that she had to submit verification of her checking accounts at [REDACTED] or [REDACTED]. Petitioner stated she submitted verification of her checking account at [REDACTED] because that is the account she uses on a daily basis. Petitioner stated that the [REDACTED] account was an estate account in which she is listed as the personal representative of her mother's estate. Petitioner stated that the [REDACTED] account was created to receive funds distributed from the estate in her role as beneficiary of the estate.

The Department sends a negative action when the client indicates a refusal to provide a verification OR the time period given has elapsed and the client has not made a reasonable effort to provide it. Petitioner clearly did not indicate a refusal to provide the verification and made a reasonable effort to comply with the requests for verification. Petitioner's confusion as to which accounts the Department was requesting verification was reasonable, as the Department did not specify on the VCL the accounts that needed to be verified. Thus, the Department did not act in accordance with policy when it closed Petitioner's FAP, MA and MSP benefit cases for the failure to verify information.

The Department testified that in addition to the verification issue, Petitioner's MA, MSP and FAP benefit cases closed due to excess assets. The Department testified that Petitioner was an ongoing MA recipient under the Ad-Care program.

For FAP cases, when determining asset eligibility, the Department will prospectively use the asset group's assets from the benefit month. BEM 400 (July 2017), 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. BEM 400, p. 3. For FAP cases, the asset limit is \$5,000 or less. BEM 400, p. 5. Assets include checking and savings accounts. BEM 400, p. 15. For cash assets, the Department does not count funds treated as income by a program as an asset for the same month for the same program. BEM 400, p. 22. For FAP cases, the Department will use the lowest checking, savings or money market balance in the month when determining asset eligibility. BEM 400, p. 15. Divestment occurs if a FAP group transfers assets for less than the fair market value for any of the following reasons: (i) to qualify for program benefits or (ii) to remain eligible for program benefits. BEM 400, pp. 5-6. When divestment occurs, the FAP case is closed for the relevant disqualification period. BEM 406 (October 2016), p. 2.

Assets must also be considered when determining eligibility under the Ad-Care and MSP benefit programs. BEM 400 (April 2018), p. 1. Ad-Care and MSP are both SSI-related MA programs. BEM 163 (July 2017), p. 1 and BEM 165 (January 2018), p. 1. The Department considers cash, investments, retirement plans, and trusts. BEM 400, p. 1. Cash assets includes funds in a checking account. BEM 400, p. 15. An asset group includes the individual and the individual's spouse. BEM 211 (January 2016), p. 8. As Petitioner is not married, her SSI-related MA group size is one. The asset limit under the Ad-Care MA program is \$2,000 for a group size of one. BEM 400, p. 8. The asset limit for a group size of one under the MSP program is \$7,730. BEM 400, p. 8. SSI-related MA programs are also subject to the current income cash exclusion. BEM 400, p. 22.

The Department presented the verification submitted by Petitioner for her [REDACTED] account showing that she had a balance of \$812.47. The Department also submitted the asset detection information showing Petitioner's balance in her [REDACTED] account was \$7,875.60 and \$2,622.10 in her [REDACTED] account. Therefore, the Department determined that Petitioner exceeded the asset limit for MA, MSP and FAP.

The Department erred when it included the [REDACTED] account in Petitioner's asset total. There was sufficient evidence presented that the account was titled in Petitioner's name in her role as a personal representative of her mother's estate. The account was not a personal account. Although Petitioner had control over the account, the funds in the account still belonged to the estate, not Petitioner. However, the funds in Petitioner's personal accounts totaled \$8,688.07. The Department did not provide any evidence as to Petitioner's Social Security Income. Petitioner stated that her gross monthly benefit amount is around \$926. With the income exclusion, Petitioner may be eligible for MSP benefits. However, it is evident Petitioner's assets well exceed the asset limit under the FAP and MA programs. Therefore, the Department established that it properly followed policy when it closed Petitioner's MA and FAP benefit cases. The Department failed to establish that it properly followed policy when it closed Petitioner's MSP benefit case.

DECISION AND ORDER

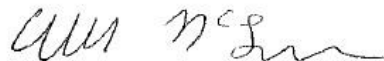
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it closed Petitioner's FAP and MA benefit cases. The Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's MSP benefit case.

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to Petitioner's FAP and MA benefit cases and **REVERSED IN PART** with respect to Petitioner's MSP benefit case.

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. Redetermine Petitioner's MSP eligibility as of September 1, 2019, ongoing;
2. If Petitioner is eligible for MSP benefits, issue supplements in accordance with Department policy; and
3. Notify Petitioner of its decision in writing.

EM/cg



Ellen McLemore
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-Wayne-57-Hearings
M. Holden
D. Sweeney
D. Smith
EQAD
BSC4- Hearing Decisions

Petitioner – Via First-Class Mail:

██████████
██████████
████████████████████