



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: December 26, 2019
MOAHR Docket No.: 19-012394
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 December 18, 2019 from ██████████ Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Shana Powell, Assistance Payments Worker. During the hearing, a 16-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-16.

Petitioner's hearing request objected to the Department's actions taken with respect to the Food Assistance Program (FAP), Medicaid (MA), and Child Development and Care (CDC) programs. At the beginning of the hearing, Petitioner indicated that she wanted to withdraw her hearing request with respect to CDC. The Department did not object. Thus, the hearing request is dismissed as it applies to any action taken with respect to CDC.

ISSUE

Did the Department properly determine Petitioner's eligibility for MA benefits, effective September 1, 2019?

Did the Department properly determine Petitioner's eligibility for FAP benefits, effective November 1, 2019?

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 FAP and MA benefits from the Department. Prior to the changes at issue in this case, Petitioner was receiving \$██████ per month

in FAP benefits and was receiving full-coverage MA benefits under the Healthy Michigan Plan (HMP).

2. On September 30, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her FAP benefits were being reduced to \$■ per month, effective November 1, 2019. Exhibit A, pp. 6-9.
3. On September 30, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that she was eligible for MA benefits from the Department subject to a monthly deductible. The deductible for September 1, 2019 through September 30, 2019, was \$434. Effective October 1, 2019, Petitioner was eligible subject to a \$1,086 monthly deductible. The Health Care Coverage Determination Notice retroactively stripped Petitioner of her full coverage that she had in September 2019. Exhibit A, pp. 14-16.
4. On November 4, 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's actions taken with respect to her FAP and MA 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).

Petitioner submitted to the Department a November 4, 2019 request for hearing objecting to two documents the Department issued on September 30, 2019 concerning her FAP and MA benefits.

SEPTEMBER 30, 2019 HEALTH CARE COVERAGE DETERMINATION NOTICE

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.

Prior to the issuance of the September 30, 2019 Health Care Coverage Determination Notice, Petitioner was receiving MA benefits from the Department under the full-coverage HMP. The September 30, 2019 notice retroactively stripped Petitioner's full-coverage MA benefits going back to September 1, 2019 and imposed a monthly deductible of \$434 for the period from September 1, 2019 through September 30, 2019.

For every month thereafter, Petitioner's MA benefits were subject to a \$1,086 monthly deductible.

Upon certification of eligibility results, the Department notifies a client in writing of positive and negative actions by generating an appropriate notice of case action. BAM 220 (April 2019), p. 2. A notice of case action must inform the client of (1) the action being taken by the Department, (2) the reason or reasons for the action, (3) the basis in policy for the action, (4) how to contest the action, and (5) the conditions under which benefits are continued if a hearing is requested. BAM 220, pp. 2-3. A positive action is a Department action to approve an application or increase a benefit. BAM 220, p. 1. A negative action is a Department action to deny an application or to reduce, suspend, or terminate a benefit. BAM 220, p. 1.

There are two types of notices: adequate notice and timely notice. BAM 220, p. 2. Adequate notice is a written notice sent to the client at the same time an action takes effect and is given for an approval or denial of an application and for increases in benefits. BAM 220, pp. 3-4. Timely notice is given for a negative action unless policy specifies adequate notice or no notice applies. BAM 220, p. 4. A timely notice is mailed at least 11 days before the intended negative action take effect. BAM 220, p. 5. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p. 5. If an error leads to a client receiving MA coverage that he or she was not entitled to, the period of erroneous coverage cannot be removed or reduced. BAM 115 (April 2019), p. 33.

At some point, Petitioner received a Health Care Coverage Determination Notice informing her that she was approved for full-coverage MA benefits for an ongoing period. Petitioner received that coverage all the way through September 30, 2019, when the Department issued the September 30, 2019 Health Care Coverage Determination Notice stripping her of that coverage and imposing a new deductible.

First, the Department was prohibited from retroactively stripping coverage it had already provided, whether it was provided in error or not. Thus, the September 30, 2019 notice failed in that regard with respect to the period from September 1, 2019 through September 30, 2019. Likewise, as the document constituted a negative action, the Department was required to provide timely notice. However, the document was issued September 30, 2019 and went into effect on October 1, 2019, just one day later. As it was not issued in a timely manner to impact October 2019 benefits, the Department violated law and Department policy.

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 retroactively stripped Petitioner's MA benefits back to September 1, 2019 and took negative action with respect to Petitioner's MA benefits, effective October 1, 2019, without providing timely notice.

SEPTEMBER 30, 2019 NOTICE OF CASE ACTION

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 September 30, 2019 Notice of Case Action reduced Petitioner's monthly FAP allotment from \$[REDACTED] to \$[REDACTED], effective November 1, 2019. The change was largely the result of the Department budgeting \$[REDACTED] in earned income from Petitioner's relatively new job with [REDACTED] ([REDACTED]). During the hearing, the Department presented one paycheck stub showing that Petitioner received gross income of [REDACTED] for services provided from September 2, 2019 through September 15, 2019. During the hearing, Petitioner asserted that she was responsible for \$300 per month in housing costs and that she had informed the Department of the same.

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.

Additionally, the information presented on the record shows that the Department overbudgeted Petitioner's earned income. To determine monthly earned income when an individual is paid more often than on a monthly basis, the Department is required to determine a weekly amount, then multiply that amount by 4.3 to get the monthly total. BEM 505 (October 2017), p. 7. Thus, Petitioner's two weeks of earnings totaling \$[REDACTED] must be divided by two to get a weekly earnings figure of \$[REDACTED]. Multiplying that figure by 4.3 results in a monthly income of \$[REDACTED]. The Department budgeted \$[REDACTED] per month as Petitioner's earned income, which based on the evidence presented, was improperly inflated.

The errors made by the Department in excluding Petitioner's housing costs and inflating Petitioner's earned income combined to cause the Department to reduce Petitioner's monthly FAP allotment. The Department must redetermine Petitioner's FAP benefits using accurate information and providing Petitioner the opportunity to verify any discrepancies in eligibility-related factors.

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 that Petitioner was eligible for \$█ per month in FAP benefits, effective November 1, 2019.

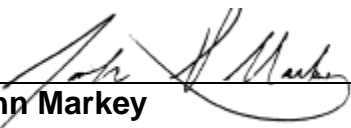
DECISION AND ORDER

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 HMP coverage back to September 1, 2019 and provide the same unless and until the Department properly provides timely notice of a negative action;
2. If Petitioner is eligible for any additional coverage that was not provided, ensure that it is properly provided;
3. Redetermine Petitioner's FAP eligibility back to November 1, 2019, ongoing;
4. If any eligibility-related factors are unclear, inconsistent, contradictory, or incomplete, follow Department policy regarding verifications;
5. If Petitioner is eligible for additional FAP benefits that were not provided, ensure that a prompt supplement is issued; and
6. Notify Petitioner in writing of its decisions.

JM/jaf



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

DHHS (via electronic mail)

Denise McCoggle
MDHHS-██████████-Hearings
BSC4
M Holden
D Sweeney
D Smith
EQAD

Petitioner (via first class mail)

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