



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: June 29, 2020
MOAHR Docket No.: 20-003420
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 June 25, 2020 from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Alaric Edgeworth-Morreau, Eligibility Specialist. During the hearing, 20-page packet of documents was offered and admitted into evidence as Exhibit A.

ISSUE

Does the undersigned Administrative Law Judge (ALJ) have jurisdiction over Petitioner's challenge to the Department's closure of her Food Assistance Program (FAP) benefits case, effective January 1, 2020?

Did the Department properly close Petitioner's Medicaid (MA) and Medicare Savings Program (MSP) benefits cases, effective March 1, 2020?

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, MSP, and FAP benefits from the Department.
2. On November 4, 2019, the Department mailed two documents to Petitioner. One was a Redetermination Telephone Interview notice informing Petitioner that she would receive a telephone call from the Department on December 4, 2019 to discuss her eligibility for continuing benefits. The other was a Redetermination

packet used to gather relevant information regarding Petitioner's ongoing eligibility for benefits. The Redetermination documentation contained instructions directing the reader to complete the form and return it to the Department by December 4, 2019. Exhibit A, pp. 5-14.

3. Petitioner did not receive the Redetermination packet but did receive the Redetermination Telephone Interview notice.
4. On December 4, 2019, Petitioner reached out to the Department after the scheduled 9:00 am telephone interview did not occur. Petitioner left a message for her worker expressing concern over the status of her case. Throughout the month of December 2019, Petitioner made multiple attempts to contact the Department to address the issue. However, the forms were not provided to Petitioner again until well after the end of December 2019.
5. On December 4, 2019, the Department issued to Petitioner a Notice of Missed Appointment informing Petitioner that she missed the December 4, 2019 appointment and that her FAP case would close at the end of December 31, 2019 if she failed to return the packet by then. Exhibit A, p. 16.
6. Effective January 1, 2020, Petitioner's FAP benefits case closed.
7. On February 14, 2020, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that her MA and MSP benefits case would be closing, effective March 1, 2020, as a result of Petitioner's failure to return the Redetermination packet. Exhibit A, pp. 17-19.
8. On [REDACTED], 2020, Petitioner submitted to the Department a request for hearing objecting to the Department's actions with respect to her MA, MSP, and FAP benefits cases.

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).

FAP CLOSURE, EFFECTIVE JANUARY 1, 2020

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.

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 792.10101 to R 792.10137 and R 792.11001 to R 792.11020. Rule 792.11002(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance is denied or is not acted upon with reasonable promptness, has received notice of a suspension or reduction in benefits, or exclusion from a service program, or has experienced a failure of the agency to take into account the recipient's choice of service.

A client's request for hearing must be in writing and signed by an adult member of the eligible group, adult child, or authorized hearing representative (AHR). Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (October 2018), p. 1. Moreover, BAM 600, p. 6 provides that a request for hearing must be received in the Department local office within 90 days of the date of the written notice of case action.

With respect to FAP, Petitioner received the written notice of case action on or about December 4, 2019 informing Petitioner that her case would be closing at the end of the month. Petitioner did not submit a hearing request concerning that case action until [REDACTED] 2020, which was well beyond the 90 day limit for contesting the action. As there was no timely hearing request, the undersigned Administrative Law Judge does not have jurisdiction to address Petitioner's challenge to the Department's action with respect to Petitioner's FAP case.

Petitioner's hearing request concerning her FAP benefits was not timely filed within ninety days of the notice and is, therefore, **DISMISSED** for lack of jurisdiction.

MA AND MSP CLOSURE, EFFECTIVE MARCH 1, 2020

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 timely objected to the Department's decision to close her MA and MSP benefits cases, effective March 1, 2020. The Department's position is that

Petitioner failed to timely return her completed Redetermination packet that was required to determine Petitioner's ongoing eligibility for program benefits. Petitioner's position is that she never received the packet and repeatedly sought assistance from the Department during the relevant time period but was unable to receive the assistance she diligently sought.

Periodically, the Department must redetermine or renew a client's eligibility for Department-issued benefits by the end of each benefit period. BAM 210 (April 2019), pp. 1, 4. The redetermination process includes thorough review of all eligibility factors. BAM 210, p. 1. If a redetermination is not completed and a new benefit period certified, the Department issues a negative action notice informing the client of the closure of the benefits. BAM 210, p. 4. To initiate the redetermination process, the Department issues to clients a redetermination form; that form must be completed and returned to the Department in a timely manner. BAM 210, p. 1.

The Department timely issued the Redetermination form, and Petitioner failed to return the completed Redetermination by the deadline, resulting in the closure of the MA and MSP benefits cases, effective March 1, 2020. Had Petitioner received the Redetermination, the Department's decision would almost certainly be upheld in this case. Had the Department timely provided Petitioner with the assistance she repeatedly requested in a diligent manner, the Department's decision would almost certainly be upheld in this case. The Redetermination, however, was not received by Petitioner, and the Department failed to provide Petitioner with the assistance she desperately sought.

The time limit to respond to telephone requests for help completing an application require the Department to either place a return call within one day or send a letter within five days. BAM 115 (October 2019), p. 2. While this was not an application, the situation is analogous. Petitioner was required to turn in a completed packet that she never received. Over the course of at least one month, she repeatedly reached out to the Department for assistance. Her requests for assistance were not timely acted upon, causing her to miss important deadlines. As Petitioner neither received the Redetermination packet nor the assistance she was due, the Department's decision cannot stand.

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 closed Petitioner's MA and MSP benefits cases, effective March 1, 2020.


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 MA and MSP benefits back to the date of closure and provide the same unless and until the Department has proper occasion to issue a timely notice of negative action with respect to one or both of those programs;
2. If Petitioner has not yet turned in the completed Redetermination form, restart the Redetermination process by issuing to Petitioner a Redetermination packet to her address of record, giving her an appropriate amount of time to complete and return it, and request any subsequent verifications, if necessary, pursuant to Department policy;
3. Determine Petitioner's ongoing eligibility for MA and MSP benefits;
4. If Petitioner is eligible for additional benefits, ensure that she receives a prompt supplement; and
5. 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

DHHS

Tara Roland 82-17
8655 Greenfield
Detroit, MI
48228

Petitioner

[REDACTED]
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[REDACTED]

cc: FAP: M. Holden; D. Sweeney
ME—D. Smith; EQADHShearings
AP Specialist-Wayne County