



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: September 16, 2020
MOAHR Docket No.: 20-005190
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 hearing was held via telephone conference on September 9, 2020. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Amani Ameer, specialist.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of July 2020, Petitioner was an ongoing recipient of FAP benefits, with her █-year-old daughter. Neither Petitioner nor her daughter were a senior, disabled, or disabled veterans.
2. As of July 2020, Petitioner and her daughter received a combined monthly unearned income of \$██████.
3. On July 25, 2020, MDHHS determined that Petitioner was ineligible for FAP benefits beginning September 2020 due to excess income
4. On August 5, 2020, Petitioner requested a hearing to dispute the termination of FAP benefits and termination of Medicaid. Additionally, Petitioner reported that her group's unemployment income had been reduced.

5. On September 9, 2020, during an administrative hearing, Petitioner withdrew her dispute concerning Medicaid.

CONCLUSIONS OF LAW

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. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a closure of Medicaid eligibility. Exhibit A, pp. 4-5. During the hearing, Petitioner testified that she now realizes that her Medicaid eligibility did not end. As a result, Petitioner withdrew her dispute concerning Medicaid. MDHHS had no objections to Petitioner's withdrawal. Concerning her dispute of Medicaid, Petitioner's hearing request will be dismissed.

The Food Assistance Program [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. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner also requested a hearing to dispute a termination of FAP benefits. Exhibit A, pp. 3-4. A Notice of Case Action dated July 25, 2020, stated that Petitioner was ineligible for FAP benefits beginning September 2020 due to excess gross income. Exhibit A, pp. 6-7.

To be eligible for FAP benefits, a non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550 (January 2017) p. 1. An SDV group is one with a senior (a person over the age of 60 years), disabled, or disabled veteran. *Id.* A categorically eligible group is one whose members are all Family Independence Program (FIP) and/or State Disability Assistance (SDA) and/or Supplemental Security Income recipients (SSI). It was not disputed that Petitioner's FAP group had no SDV members, FIP recipients, SSI recipients, or SDA recipients. Thus, Petitioner's FAP group is subject to gross income limits.

In determining Petitioner's FAP eligibility, MDHHS factored a group of two which included Petitioner and her adult daughter.¹ Petitioner's did not dispute the benefit group size.

As of July 2020, MDHHS determined that Petitioner's group's unearned income was \$██████. Exhibit A, p. 10. Petitioner did not dispute the income factored, nor that the income was from unemployment. The unemployment income was a combination of federally and state-issued benefits. Petitioner contended that the federal-issued portion of unemployment benefits should not be factored in her FAP eligibility. The United States Department of Agriculture in a memorandum dated April 11, 2020, stated that federally issued unemployment benefits under the Coronavirus Aid, Relief, and Economic Security (CARES) Act are countable for purposes of FAP benefits.² Thus, federal-issued unemployment income is countable in determining FAP eligibility.

For FAP benefits, MDHHS counts gross unemployment income. BEM 501 (July 2017), p. 7. For non-child support income, MDHHS uses past income to project a FAP group's income. BEM 505 (October 2017) p. 5. Stable or fluctuating biweekly employment income is converted to a monthly amount by multiplying the average income by 2.15. *Id.*, p. 8. Given the evidence, MDHHS properly calculated Petitioner's group's gross income to be \$██████.

The monthly gross income limit for a 2-person FAP group is \$1,832. RFT 250 (October 2018) p. 1. Petitioner's countable gross income exceeded the gross income limit. Thus, MDHHS properly initiated closure of Petitioner's FAP eligibility due to excess gross income.

Petitioner credibly testified that her and/or her daughter's unemployment stopped after July 2020. Petitioner also testified that she reported this to MDHHS on August 5, 2020, when she requested a hearing. Petitioner's testimony may be relevant if MDHHS was obligated to recalculate Petitioner's eligibility following her reporting.

A negative action is a MDHHS action to deny an application or to reduce, suspend or terminate a benefit. BAM 220 (April 2019) p. 1. A closure of FAP benefits is a negative action requiring timely notice. *Id.*, p. 4. A timely notice is mailed at least 11 days before the intended negative action takes effect. *Id.*, pp. 4-5. The action is pended to provide the client a chance to react to the proposed action. *Id.* Negative actions are to be deleted if a client complies with the reason for the negative action before the negative action date. *Id.*, p. 13.

Negative actions must also be deleted when a client timely requests a hearing by the timely hearing request date. *Id.* The timely hearing request date is the last date on which a client can request a hearing and have benefits continued or restored pending the hearing. *Id.* It is always the day before the negative action is effective. *Id.* The

¹ See BEM 212 for policies on determining group size for FAP benefits.

² <https://www.kark.com/wp-content/uploads/sites/85/2020/04/SNAP-COVID-QA1-April-11.pdf>

negative action date is the day after the timely hearing request date stated on the Notice of Case Action. *Id.*, p. 12.

The Notice of Case Action sent to Petitioner listed a negative action date of August 5, 2020. Thus, Petitioner had until August 5, 2020 to request a hearing and continue receiving FAP benefits. She also had until August 5, 2020 to comply with the reason for the negative action.

MDHHS contended that Petitioner's hearing request was received on August 6, 2020; thus, it was one day too late for Petitioner to continue receiving FAP benefits before the hearing and/or for Petitioner to have an opportunity to comply with the negative action. MDHHS's contention was based on Petitioner's hearing request being date stamped as received by MDHHS on August 6, 2020. Exhibit A, pp. 3-4.

Petitioner testified that she dropped-off her documents to MDHHS on August 5, 2020. To support her testimony, Petitioner took a photo of her hand dropping off a return envelope into the MDHHS drop-box with a date stamp of August 5, 2020 at 3:15 p.m. Exhibit 1, p. 4.³ Petitioner's photographic evidence was compelling support that she submitted her hearing request on August 5, 2020.

Given the evidence, Petitioner submitted a hearing request by the timely hearing request date; thus, MDHHS was required to continue issuing FAP benefits to Petitioner, pending the hearing outcome. MDHHS acknowledged not continuing Petitioner's FAP benefits. As a practical matter, MDHHS's failure to continue issuing benefits is only relevant if Petitioner establishes that she was entitled to continue receiving FAP benefits.⁴

In her hearing request, Petitioner did not directly report a change in unemployment income, but she did attach documentation dated July 17, 2020, of unemployment income. Exhibit A, p. 8. The documentation listed \$█ in weekly unemployment payments to Petitioner; this amount was significantly smaller than previously budgeted unemployment income. Notably, Petitioner requested a hearing disputing FAP eligibility for September 2020. As of July 2020, Petitioner received federal-issued unemployment income, which MDHHS acknowledged stopped as of August 2020. Petitioner's submission of her updated income equates to a reported reduction in income. It was not too late for Petitioner to report such a change because her case was still active as of her reporting date.

For FAP benefits, MDHHS is to act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (April 2019) p. 7. Changes which result in an increase in the household's benefits, such as a reported

³ The official exhibits of Petitioner's photos were not downsized sufficiently to fully display the photo or the date and time of photo. During the hearing, MDHHS testimony acknowledged that Petitioner's photographs were indeed date and time stamped for August 5, 2020, at 3:15 p.m.

⁴ If a client continues receiving benefits due to a timely requested hearing, but loses the hearing, MDHHS can recoup benefits that were overissued as a result of the client continuing to receive benefits.

decrease in income, must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. *Id.*

MDHHS should have processed Petitioner's reported reduction in unemployment income. Instead, MDHHS took no action and allowed Petitioner's FAP eligibility to end beginning September 2020.

As it happened, Petitioner reapplied for FAP benefits in August 2020. MDHHS contended that Petitioner's hearing request is superfluous if her application is approved. MDHHS's contention is accurate, but it does not alleviate MDHHS of the responsibility of processing Petitioner's reported change. If MDHHS had done so, Petitioner would not have had to reapply.

Given the evidence, MDHHS failed to process Petitioner's reported reduction in unemployment income dated August 5, 2020. As an administrative remedy, Petitioner is entitled to a processing of her reported change.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner withdrew her dispute concerning a termination of Medicaid. Concerning the dispute of Medicaid, Petitioner's hearing request is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FAP eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's FAP eligibility effective September 2020, subject to the findings that Petitioner timely requested a hearing and reported a reduction in unemployment income on August 5, 2020; and
- (2) Issue any supplement of benefits and/or notice in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/tlf



Christian Gardocki

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-Macomb-20-Hearings
BSC4 Hearing Decisions
M. Holden
D. Sweeney
MOAHR

Petitioner – Via First-Class Mail:

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