



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], MI [REDACTED]

Date Mailed: February 24, 2021
MOAHR Docket No.: 20-008115
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 February 11, 2021, from Lansing, Michigan. The Petitioner [REDACTED] self-represented. The Department of Health and Human Services (Department or Respondent) was represented by Amber Gibson, Hearings Facilitator.

Respondent's Exhibit pages 1-34 were admitted as evidence.

ISSUE

Did the Department properly reduce Petitioner's 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. Petitioner is a Food Assistance Program recipient for herself and her daughter.
2. On November 30, 2020, Petitioner inquired on page two on the redetermination about a temporary absence.
3. On December 3, 2020, during an interview Petitioner reported that her daughter was not in the home for the two weeks prior to the interview and would not return until the beginning of January.
4. The Department removed the child from the case.

5. On December 9, 2020, the Department sent Petitioner Notice of Case Action that Petitioner's FAP benefits were reduced to \$204.00 from December 1, 2020-November 30, 2021 for a household size of one person based on the determination that a group member is not or is no longer living with Petitioner. Therefore, his/her needs are not considered when determining eligibility.
6. On December 18, 2020, Petitioner reported the child was back in the house, indicating that the child was out of the home in November 2020 temporarily (14 days) non-consecutive and back home with Petitioner on December 5, 2020, and away from home together until December 20, 2020, and again with Petitioner on December 28, 2020. No days away more than 30.
7. On January 6, 2021, the Department added the child back into the home for January and ongoing and sent Petitioner Notice of Case Action that her Food Assistance Program was increased to \$350.00 per month for a household of two from January 1, 2021-November 30, 2021.
8. Petitioner's Medical Assistance has always been open and has not closed.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance has been denied. MAC R 400.903(1). Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

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 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 the instant case, the Department indicated on the record that Petitioner's Medical Assistance case has not been cancelled and remains open despite the fact that

Petitioner received a letter to the contrary. Petitioner alleges that her medical professionals have not honored her Medical Assistance eligibility.

Based upon the statement of the Department Representative Petitioner remains eligible for MA and should be receiving coverage.

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 Michigan Office of Administrative Hearings and Rules (MOAHR) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits, or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service.
BAM 600 (April 1, 2017), pp 3-4.

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days. BAM 600, page 6

Pertinent FAP policy indicates:

Federal regulations at 7 CFR 271; 273 provides standards for the determination of Food Assistance Program budgeting. The Department follows the program reference manual, tables, charts, schedules, Table 240-1.

Bridges will help determine who must be included in the Food Assistance Program (FAP) group prior to evaluating the non financial and financial eligibility of everyone in the group. Food Assistance Program group composition is established by determining all of the following:

1. Who lives together.
2. The relationship(s) of the people who live together.

3. Whether the people living together purchase and prepare food together or separately.
4. Whether the person(s) resides in an eligible living situation; see LIVING SITUATIONS in this item. (BEM 212, page 1)

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. First, determine if they must be included in the group. If they are not mandatory group members, then determine if they purchase and prepare food together or separately. (BEM 212, page 1)

Children include natural, step and adopted children. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. (BEM 212, page 1)

Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share only an access area such as an entrance or hallway or non-living area such as a laundry room are not considered living together. (BEM 212, page 3)

A person who is temporarily absent from the group is considered living with the group. A person's absence is temporary if all of the following are true:

- The person's location is known.
- The person lived with the group before an absence (newborns are considered to have lived with the group).
- There is a definite plan for return.
- **The absence has lasted or is expected to last 30 days or less.** Exception: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home. (BEM 212, page 3)

In the instant case, Petitioner testified that her daughter was not out of the for 30 days consecutively. She had to leave the home because of COVID initially. Both Petitioner and her daughter were out of the house because of a domestic abuse situation where her home was damaged, and it was not safe to remain. Petitioner and her daughter were together but not in her home. Petitioner expected to provide the information to her caseworker on the date of meeting, but the meeting was never conducted on December 8, 2020, because the caseworker did not contact her.

No one who worked on the case was present for the hearing and could testify to the actual conversation between Petitioner and the caseworker. The caseworker sent Petitioner a Notice of appointment but did not attend the meeting. The caseworker apparently used information that she received on December 3, 2020 to decide that the child was out of the house for over 30 days. Petitioner's testimony is found to be credible in this case. Her testimony is uncontroverted.

Good Cause is defined as a circumstance which is considered a valid reason for not complying with a requirement. (BPG Glossary page 29). Petitioner has established by her testimony, good cause for her child to be out of the house for a period of time.

The Department has not established by a preponderance of evidence on the record that it was acting in accordance with department policy when it sent Petitioner notice that her Medical Assistance case was cancelled and when it reduced Petitioner's Food Assistance Program benefits because Petitioner's child was temporarily out of the home.

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. Investigate Petitioner's Medical Assistance and if Petitioner is otherwise eligible, and make certain that her Medical Assistance case is properly open and has been open from the month of October 2020 forward in accordance with Department policy.
2. Reinstate Petitioner's daughter to her Food Assistance case for the month of December 2020,
3. If Petitioner is otherwise eligible, pay to Petitioner the appropriate supplemental Food Assistance benefits for the month of December 2020.

LL/hb



Landis Lain
Administrative Law Judge
for Elizabeth Hertel, 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

Ingham County via electronic mail

BSC2 via electronic mail

C. George via electronic mail

EQADHShearings via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]