



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: April 27, 2023
MOAHR Docket No.: 23-001225
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 on April 20, 2023 via teleconference. Petitioner appeared and represented herself. Valarie Foley, Hearings Facilitator, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUES

1. Did MDHHS properly terminate Petitioner's Food Assistance Program (FAP) benefits?
2. Did MDHHS properly terminate Petitioner's Medicaid (MA) coverage?

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 benefits and MA coverage on behalf of herself and two minor children.
2. On February 22, 2023, a representative from Western Wayne Child & Family Services notified MDHHS that Petitioner no longer resided in Michigan (Exhibit A, p. 19).
3. On February 23, 2023, MDHHS sent Petitioner a Health Care Coverage Determination Notice indicating that Petitioner's MA coverage was terminated effective March 1, 2023, because Petitioner requested in writing that her assistance be stopped (Exhibit A, p. 21). The MA coverage for Petitioner's minor

children was also terminated, effective March 1, 2023, for the same reason (Exhibit A, p. 21).

4. On February 23, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that her FAP case would be closed, effective April 1, 2023 ongoing, for failing to meet the residency requirement for the program (Exhibit A, pp. 25-26).
5. On March 8, 2023, Petitioner requested a hearing to dispute the closure of her FAP and MA cases (Exhibit A, p. 3).

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)

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. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-119b, and Mich Admin Code, R 400.3001-.3011.

In this case, MDHHS terminated Petitioner's FAP benefits and closed her case after receiving information from a third party that Petitioner was no longer residing in the State of Michigan. At the hearing, Petitioner disputed MDHHS' action and argued that she was still a Michigan resident.

Pursuant to federal regulations, MDHHS shall not impose any durational residency requirements for FAP and there is no requirement that an eligible household reside in the state, except for at the time of application. See 7 CFR 273.3(a) ("A household shall live in the State in which it files an application for participation. . . . The State agency shall not impose any durational residency requirements. The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area.").

BEM 220 requires that a person be a Michigan resident for FAP eligibility and provides that a person is a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220 (January 2023), p. 1. To comply with the federal regulations, this rule can only apply at the time of application.

MDHHS is required to obtain verification when it is required by policy or information is unclear or incomplete. BAM 130 (January 2023), p. 1. To obtain verification, MDHHS must tell the client what verification is required, how to obtain it and the due date. *Id.*, p. 3. The client must obtain the requested verification, but the local office must assist the client if they need and request help. *Id.*, p. 3. MDHHS sends a negative action notice when the client indicates a refusal to provide the requested verification, or the time period given on the VCL has lapsed and the client has not made a reasonable effort to provide it. *Id.* Before determining eligibility, MDHHS is required to give clients a reasonable opportunity to resolve any discrepancy between their statements and information from another source. *Id.*, p. 9.

Here, the record shows that MDHHS received information regarding Petitioner's residency from a third party. There is no evidence that MDHHS attempted to verify this information with Petitioner or that it gave Petitioner a reasonable opportunity to resolve the discrepancy, contrary to policy. Additionally, there is no durational residency requirement for FAP, pursuant to federal regulations. MDHHS did not present any evidence to show that Petitioner was not a Michigan resident at the time of application. Furthermore, Petitioner testified that she was only temporarily absent from Michigan during the week due to family obligations, and that she returned to her home in Michigan on the weekends. Under these circumstances, Petitioner is a Michigan resident for the purposes of FAP.

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 MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it terminated Petitioner's FAP benefits.

The Medicaid (MA) Program

MA 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 the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, MDHHS terminated the MA coverage for Petitioner and her minor children after receiving information for a third party that the individuals were no longer Michigan residents. Petitioner disputed MDHHS' determination.

A person must be a Michigan resident to receive MA issued by MDHHS. BEM 220, p. 1. For MA purposes, an individual is a Michigan resident if he or she is living in Michigan except for a temporary absence. *Id.*, p. 1-2. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. *Id.* For example, individuals who spend winter months in a warmer client and return to their homes in the spring remain Michigan residents during the winter months. *Id.* Additionally, college students who attend school

out-of-state but return home during semester breaks or for summer can remain Michigan residents. *Id.*

At the hearing, Petitioner testified that she did not move out-of-state and argued that she was a Michigan resident. She owns a home in Michigan and resides there on the weekends with her minor children. During the week, she travels to Ohio to care for the father of one of her minor children who has been diagnosed with a terminal illness. Petitioner and the children stay with the father in Ohio during the week and return to their home in Michigan on the weekends. The minor children attend school in Ohio during the week. Petitioner's testimony was credible and un rebutted.

Based on the testimony provided at the hearing, Petitioner established that she and her minor children were Michigan residents and that she was temporarily absent from the state during the week due to family obligations. Petitioner did not intend to move to Ohio. Additionally, MDHHS did not allow Petitioner a reasonable opportunity to resolve any discrepancies between her statements and information from a third party prior to terminating the MA coverage, contrary to BAM 130.

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 MDHHS did not act in accordance with Department policy when it terminated MA coverage for Petitioner's household.

DECISION AND ORDER

Accordingly, MDHHS decision is **REVERSED**.

MDHHS 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 FAP case, effective April 1, 2023 ongoing;
2. Issue supplements to Petitioner for any FAP benefits that she was eligible to receive, but did not, from April 1, 2023 ongoing;
3. Reinstate Petitioner's MA case, effective March 1, 2023 ongoing;
4. Provide MA coverage to Petitioner and her minor children from March 1, 2023 ongoing, provided that other eligibility factors are met; and
5. Notify Petitioner of its decision in writing.

LJ/tm



Linda Jordan
Administrative Law Judge

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-Electronic Mail :

DHHS
Susan Noel
Wayne-Inkster-DHHS
26355 Michigan Ave
Inkster, MI 48141
**MDHHS-Wayne-19-
Hearings@michigan.gov**

Interested Parties

M. Holden
D. Sweeney
BSC4

Via-First Class Mail :

Petitioner

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