



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: December 28, 2023
MOAHR Docket No.: 23-008096
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 December 18, 2023. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Dania Ajami, lead specialist.

ISSUES

The first issue is whether MDHHS properly terminated Petitioner's Child Development and Care (CDC) eligibility.

The second 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. On August 4, 2023, MDHHS mailed Petitioner a Redetermination form regarding CDC and FAP benefits. The Redetermination form stated that MDHHS would call Petitioner for a redetermination interview on September 1, 2023 at 10:30 a.m.
2. On August 25, 2023, Petitioner returned to MDHHS the Redetermination form.
3. On September 1, 2023, MDHHS called Petitioner for a redetermination interview and left a voicemail after Petitioner did not answer.

4. On September 19, 2023 and September 21, 2023, Petitioner seeking to be interviewed; Petitioner left a voicemail for MDHHS both times.
5. Beginning October 2023, MDHHS halted FAP benefit issuances to Petitioner.
6. On October 10, 2023, MDHHS sent Petitioner notice of CDC closure due to Petitioner's alleged failure to return a Redetermination form.
7. On November 4, 2023, Petitioner's CDC eligibility ended.
8. On November 8, 2023, Petitioner requested a hearing to dispute the termination of CDC and FAP benefits.
9. On November 14, 2023, MDHHS began processing Petitioner's CDC redetermination by sending Petitioner a Verification Checklist requesting proof of unearned income by November 27, 2023.
10. On November 20, 2023, MDHHS terminated Petitioner's FAP eligibility beginning October 2023 due to a failure to be interviewed.

CONCLUSIONS OF LAW

The CDC program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The CDC program is implemented by 45 CFR 98.1-99.33. MDHHS administers the CDC program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020. CDC policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing, in part, to dispute a termination of CDC benefits. Exhibit A, pp. 3-8. MDHHS did not present documentation of closure but testified that a closure notice dated October 10, 2023, stated that Petitioner's CDC eligibility would end November 4, 2023 due to Petitioner's alleged failure to return a Redetermination form.

For all programs, MDHHS must periodically redetermine or renew an individual's eligibility for active programs. BAM 210 (October 2022) p. 1. The redetermination process includes a thorough review of all eligibility factors.¹ *Id.* For all programs, MDHHS mails a redetermination packet to the client three days prior to the negative action cut-off date in the month before the redetermination is due. *Id.*, p. 8. If MDHHS does not log a returned Redetermination form by the cut-off date of the redetermination

¹ For Medicaid, an annual review of all eligibility programs is called a "renewal". For all other programs, the process is a "redetermination". BAM 210 (October 2019) p. 1.

month, a notice is generated warning the client of benefit closure by the end of the month. *Id.*, p. 13.

MDHHS sent Petitioner a Redetermination form on August 24, 2023: two months before Petitioner's CDC eligibility ended. Petitioner returned the Redetermination form to MDHHS on August 25, 2023: Exhibit A, pp. 10-13. Thus, Petitioner returned the Redetermination form to MDHHS more than one full month before CDC eligibility was scheduled to end. Presumably, MDHHS failed to log Petitioner's timely submission because it sent Petitioner a notice of CDC benefit closure on October 10, 2023 warning that CDC benefits would end due to Petitioner's failure to return redetermination documents.

The evidence established that Petitioner timely returned a Redetermination form for CDC benefits. Thus, MDHHS improperly terminated Petitioner's CDC eligibility. As a remedy, Petitioner is entitled to a processing of the CDC redetermination.

MDHHS acknowledged its error and stated that Petitioner's redetermination has since been processed. MDHHS further stated that Petitioner's CDC redetermination is pending due to Petitioner failing to verify unearned income.

MDHHS is to verify unearned income at redetermination. BEM 505 (January 2023) p. 43. For all programs, MDHHS is to tell the client what verification is required, how to obtain it, and the due date. BAM 130 (July 2021) p. 3. MDHHS is to use the DHS-3503, Verification Checklist (VCL), to request verification. *Id.* MDHHS is to allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. *Id.*, p. 7. MDHHS is to send a negative action notice when:

- The client indicates refusal to provide a verification, or
- The time period given has elapsed and the client has not made a reasonable effort to provide it. *Id.*

MDHHS sent Petitioner a VCL on November 14, 2023 requesting an update on unspecified unearned income. Exhibit A, pp. 15-16. During the hearing, MDHHS clarified that the needed update concerned child support income. Petitioner responded that she only received child support for her oldest daughter and no other children; Petitioner additionally testified that she reported this previously to MDHHS by submitting documentation on October 19, 2023. MDHHS did not dispute Petitioner's testimony; additionally, MDHHS acknowledged it had child support income information for Petitioner's oldest daughter.

Given the evidence, MDHHS failed to establish that Petitioner's CDC eligibility remained properly unprocessed. As a remedy, MDHHS will be ordered to process Petitioner's CDC eligibility.

The 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 the FAP pursuant to

MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. FAP policies are contained in the BAM, BEM, and RFT.

Petitioner also requested a hearing to dispute a termination of FAP benefits. Exhibit A, pp. 3-5. A Notice of Case Action dated November 20, 2023, stated that Petitioner's FAP eligibility ended beginning November 2023 due to an interview not being completed.² Exhibit A, pp. 17-20. Exhibit A, pp. 17-21.

Generally, MDHHS must usually conduct an interview before redetermining FAP eligibility.³ The benefit group loses its right to uninterrupted benefits if it fails to participate in the scheduled interview. *Id.*, p. 21.

MDHHS testified it called Petitioner on September 1, 2023 to interview Petitioner. After Petitioner did not answer, it sent Petitioner notice that an interview was missed. MDHHS documented it called Petitioner on September 21, 2023 after Petitioner's left a message on September 19, 2023 but was unable to leave a message because of a full voicemail. Exhibit A, p. 14. MDHHS also testified it returned Petitioner's call on November 11, 2023, after Petitioner left a message on October 10, 2023. MDHHS further testified that it called Petitioner on November 14, 2023, but was unable to leave a message due to Petitioner's phone being disconnected.

Petitioner testified she called MDHHS on the date of interview but received no call back. Petitioner additionally testified that she twice went to the MDHHS office, but nobody would interview her. Petitioner also denied that her voicemail was ever full, though she acknowledged having a disconnected telephone in November 2023.

Generally, MDHHS policy is silent concerning rescheduling interviews. In lieu of clear policy, a standard of a reasonable effort by MDHHS and the client will be imposed.

Problematic for MDHHS is that its own testimony acknowledged waiting one month to return Petitioner's message on October 10, 2023. Waiting over one month to return a client calling to be interviewed is unreasonable. Also problematic for MDHHS is that there was no evidence it sent Petitioner any written notice of a rescheduled interview date. Further, MDHHS presented no explanation why Petitioner could not be interviewed the two times she called MDHHS. Though Petitioner was not available when MDHHS returned her calls, she cannot be faulted for failing to answer any calls except for the initial interview for which she received notice. The evidence established reasonable efforts by Petitioner to be interviewed and unreasonable efforts by MDHHS to interview Petitioner.

² The notice also stated that Petitioner failed to meet program requirements. MDHHS did not allege a closure based on this reason and it will not be further considered in the analysis.

³ FAP groups that have no earned income and in which all adult members are elderly or disabled do not require an interview at redetermination, unless the group requests an interview or if there are any outstanding issues or questions about the recertification process. BAM 210 (October 2022), p. 7.

Given the evidence, Petitioner did not fail interview requirements. Thus, MDHHS failed to establish it properly terminated Petitioner's FAP eligibility beginning October 2023 due to a failure to be interviewed. As a remedy, Petitioner is entitled to a processing of FAP benefits beginning October 2023 which may include a rescheduled redetermination interview.

DECISION AND ORDER

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

- (1) Process Petitioner's CDC benefits beginning November 5, 2023, subject to the findings that Petitioner timely returned to MDHHS a Redetermination form and proof of child support income.
- (2) Process Petitioner's FAP eligibility beginning October 2023 subject to the finding that Petitioner did not fail to comply with interview requirements; and
- (3) Issue notice and a supplement of benefits, if any, in accordance with policy.

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

CG/nr



Christian Gardocki
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

Caryn Jackson
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Hamtramck, MI 48212
**MDHHS-Wayne-55-
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Interested Parties

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MOAHR

Via-First Class Mail :

Petitioner

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