



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], MI [REDACTED]

Date Mailed: February 16, 2024
MOAHR Docket No.: 23-009961
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 line on February 12, 2024. Petitioner did not participate. Petitioner's mother, [REDACTED] [REDACTED] testified and participated as Petitioner's authorized hearing representative (AHR). The Michigan Department of Health and Human Services (MDHHS) was represented by Megan Latonna, hearing facilitator.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's state-issued Supplemental Security Income payment (SSP).

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 December 2022, Petitioner was a recipient of Supplemental Security Income (SSI). Petitioner also received ongoing SSP averaging \$14 monthly.
2. From January 2023 through at least February 2024, Petitioner received ongoing federally issued first of the month SSI payments.
3. On February 18, 2023, MDHHS sent Petitioner notice that SSP would be reduced beginning March 2023, after failing to receive a regular first of the month SSI payment for two months.

4. On May 20, 2023, MDHHS sent Petitioner notice that SSP would be cancelled beginning May 2023 due to Petitioner failing to receive a regular first of the month SSI payment for three months.
5. On May 30, 2023, Petitioner's AHR requested a hearing to dispute the reduction and termination of Petitioner's SSP benefits.

CONCLUSIONS OF LAW

The State SSI Payments (SSP) program is established by 20 CFR 416.2001-.2099 and the Social Security Act, 42 USC 1382e. MDHHS administers the program pursuant to MCL 400.10.

Petitioner's mother requested a hearing to dispute a suspension and subsequent termination of Petitioner's SSP benefits. Exhibit A, pp. 5-8. A Notice of State SSI Payment Change dated February 18, 2023, stated that Petitioner's SSP would be reduced in March 2023 due to Petitioner not receiving a first of the month SSI payment for two months. Exhibit A, pp. 7-8. A Notice of State SSI Payment Change dated May 20, 2023, stated that SSP payments would be cancelled beginning May 2023 due to Petitioner not receiving a regular first of the month SSI payment for three months. Exhibit A, pp. 9-10.

Petitioner's AHR testified that Petitioner has not received SSP beginning January 2023. Persons in independent living situations are eligible for \$14 in monthly SSP (see RFT 248). MDHHS credibly testified that a \$14 SSP payment was issued to Petitioner for December 2022 and no SSP was issued since. MDHHS's testimony is consistent with a stoppage in SSP beginning January 2023.

SSI is a cash benefit to needy persons who are aged (at least 65), blind or disabled. BEM 660 (January 2017) p. 1. It is a federal program administered by the SSA. *Id.* States are allowed the option to supplement the federal benefit with state funds. *Id.* In Michigan, SSI benefits include a basic federal benefit and an additional amount paid with state funds (SSP). *Id.* SSP is paid quarterly in the last month of the quarter. SSP is issued for only those months the recipient received a regular first of the month federal benefit. *Id.*

Petitioner's AHR presented a list of Petitioner's SSI payments beginning January 2023. Exhibit 1, pp. 3-4. For all months beginning January 2023, Petitioner received an SSI payment no later than the first of every month.¹

MDHHS also justified cancelling SSP based on how the SSA allegedly coded Petitioner's SSI case. Exhibit A, p. 11. Per MDHHS, Petitioner's Medicaid eligibility code was "G" which stands for Goldberg/Kelly payment continuation. Under Emergency

¹ In some months, Petitioner received SSI early when the first of the month fell on a weekend. Such payments are typical. https://www.ssa.gov/kc/rp_paybenefits.htm

Message (EM) 21064 REV, the SSA allows recipients to continue receiving benefits following a notice of a negative action if a request for reconsideration is filed within 65 days of the notice.² The policy is based on the landmark United States Supreme Court case requiring due process in administrative matters. *Goldberg v. Kelly*, 397 U.S. 254 (1970). MDHHS's refusal to issue SSP to Petitioner implies that SSA intended to terminate Petitioner's SSI benefits and that only a pending request for reconsideration prevented SSA from doing so.³ Presumably, MDHHS contends that such circumstances allow for it to cease SSP issuances to Petitioner.

MDHHS has two significant obstacles in defending its actions. First, MDHHS presented no authority to justify stopping SSP issuances. Generally, a negative action without support is reversible. Secondly, MDHHS did not issue proper notice for its negative action. The notices sent to Petitioner stated that the suspension and termination of benefits were justified due to Petitioner not receiving a regular first of the month payment. Yet, first of the month regular payments have been issued since January 2023. MDHHS must send clients notice of negative actions which must include, among other requirements, the reason for the action and the specific manual item supporting the action. BAM 220 (November 2023) pp. 2-3 The notices suspending and terminating SSP did not include any reference to *Goldberg v Kelly* coding or underlying policy explaining the basis for the negative action.

Given the evidence, MDHHS improperly suspended and terminated Petitioner's SSP eligibility. As a remedy, Petitioner is entitled to a reinstatement of SSP benefits.

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 SSP eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reinstatement of Petitioner's SSP eligibility beginning January 2023 subject to the finding that MDHHS failed to establish it properly terminated benefits; and
- (2) Issue notice and benefits supplements, if any, in accordance with policy.

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

CG/nr



Christian Gardocki
Administrative Law Judge

² <https://secure.ssa.gov/apps10/reference.nsf/links/10292021100254AM>

³ Petitioner's mother denied receiving any notice from SSA threatening Petitioner's SSI eligibility.

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

Dawn Tromontine
Macomb County DHHS Sterling
Heights Dist.
41227 Mound Rd.
Sterling Heights, MI 48314
**MDHHS-Macomb-36-
Hearings@michigan.gov**

Interested Parties

Macomb 36 County DHHS
BSC4
M. Schaefer
EQAD
MOAHR

Via-First Class Mail :

Authorized Hearing Rep.

[REDACTED]
[REDACTED], MI [REDACTED]

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]