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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: March 29, 2022
MOAHR Docket No.: 22-000390
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 March 23, 2022. Petitioner participated and was represented. [REDACTED] [REDACTED], Petitioner's mother and guardian, participated as Petitioner's authorized hearing representative (AHR).¹ The Michigan Department of Health and Human Services (MDHHS) was represented by Jaime Morgan, 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 December 2021, Petitioner was an ongoing recipient of FAP benefits under the Michigan Combined Application Project (MiCAP).
2. On an unspecified date, Petitioner and/or his AHR reported a change in address to the Social Security Administration (SSA).
3. On January 7, 2022, MDHHS mailed Petitioner a Verification Checklist (VCL) requesting a reporting of updated group composition.

¹ During the hearing, Petitioner verbally authorized the representation.

4. On [REDACTED], 2022, MDHHS terminated Petitioner's FAP eligibility beginning [REDACTED] 2022 due to Petitioner's alleged failure to verify group composition.
5. On February 7, 2022, Petitioner's AHR verbally requested a hearing to dispute the termination of FAP benefits.

CONCLUSIONS OF LAW

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 Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner's AHR verbally requested a hearing to dispute a termination of FAP benefits.² Exhibit A, pp. 3-4. Petitioner was receiving FAP benefits under the MiCAP program. A Notice of Case Action stated that Petitioner's FAP eligibility would end March 2022 due to a failure to verify information. MDHHS testified that Petitioner specifically failed to report updated group composition following a reported change in address.

MiCAP is a Food Assistance demonstration project approved by the Food and Nutrition Service. BEM 618 (January 2019), p. 1. MiCAP is a series of waivers that allows MDHHS to issue FAP benefits to SSI individuals who qualify for the program. *Id.*

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 send a VCL to request verification. *Id.* MDHHS is to allow the client at least 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.*

Petitioner's specialist credibly testified that she learned that Petitioner reported an updated address to the SSA. To her credit, she called Petitioner on January 7, 2022, to learn if Petitioner had any change in expenses or group composition. After the call was unsuccessful, she sent Petitioner a VCL requesting a reporting of updated household members by January 18, 2022.³ Exhibit A, pp. 8-11. By January 25, 2022, no reporting of updated group composition occurred which resulted in MDHHS sending notice of case closure. MDHHS contended that case closure properly ensued due to Petitioner's failure to timely report group composition. For two reasons, MDHHS contention was not persuasive.

² Clients and/or their representatives may verbally request hearings to dispute FAP eligibility. BAM 600 (January 2021) p. 8.

³ A Shelter Verification sent on the same date of the VCL was timely returned. Exhibit A, pp. 12-13.

First, MDHHS assumes that a failure to comply with a request for verification justifies case closure. For case closure to be proper, the request for verification must be authorized by policy. Following a change in address, MDHHS is authorized to request proof of updated housing costs or utility obligations (see BEM 554). MDHHS may also be authorized in verifying that a person lives in the area served by the local MDHHS office following an address change. (see BEM 220). No known policy authorizes MDHHS to mandate a reporting of household composition merely from a change of address.⁴ Because the mandate was improper, the ensuing case closure stemming from an alleged failure to comply with the mandate was also improper.

Secondly, even if MDHHS was authorized to require an update on group composition, MDHHS had the opportunity to resolve the issue when Petitioner's AHR called on February 7, 2022. MDHHS properly documented Petitioner's AHR's verbal request for hearing but assumed that it was too late to accept a reporting of group composition.

There are two types of written notice: adequate and timely. Adequate notice is a written notice sent to the client at the same time an action takes effect (not pending). BAM 220 (November 2021) p. 3. A timely notice is mailed at least 11 days before the intended negative action takes effect; the action is pending to provide the client a chance to react to the proposed action. *Id.*, p. 4. Timely notice is given for a negative action unless policy specifies adequate notice or no notice.⁵ *Id.* The negative action effective date is calculated by the MDHHS database and is the day after the timely hearing request date listed on the notice.⁶ *Id.*, p. 12.

The closure notice issued by MDHHS was a timely notice. The timely hearing request date on the closure notice was February 7, 2022. The negative action effective date would fall one day later. Petitioner's AHR called MDHHS on the timely hearing request date. Thus, Petitioner's AHR's call to MDHHS was before the negative action effective date of February 8, 2022, which would have allowed Petitioner to comply with the requested reporting of group composition. MDHHS's failure to seek a reporting from Petitioner's AHR is a reversible error.

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

⁴ MDHHS cited BEM 212 as justification for its verification. BEM 212 discusses group composition. It provides no justification to verify group composition following a reported address change.

⁵ Circumstances when no notice is required are listed in BAM 220 (July 2020) p. 5.

⁶ A timely hearing request date is the last date that a client has to request receiving the benefits issued before the pending negative action while the hearing is pending. BAM 600 (March 2021) p. 25.

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

- (1) Reinstate Petitioner's FAP eligibility beginning [REDACTED] 2022 subject to the findings that MDHHS improperly requested proof of group composition and MDHHS failed to accept Petitioner's AHR's efforts in reporting group composition before the negative action effective date; and
- (2) Issue benefit supplements and notice in accordance with policy.

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

CG/ml



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

Email Recipients:

MDHHS-MiCAP-Hearings
D. Sweeney
M. Holden
MOAHR

First Class Mail Recipients:

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

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