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GOVERNOR

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

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DIRECTOR

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██████████, MI ██████████

Date Mailed: January 28, 2025
MOAHR Docket No.: 24-013868
Agency No.: ██████████
Petitioner: ██████ ██████

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 Microsoft Teams on January 21, 2025; the parties participated via telephone. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Megan Iatonna, hearings facilitator.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's FAP eligibility due to student status.

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 ██████ ██████ 2024, Petitioner applied for FAP benefits and reported a benefit group with no other persons. Petitioner additionally reported being disabled.
2. As of May 2024, Petitioner was enrolled at least half-time in a college curriculum while aged 18-49 years.
3. On May 9, 2024, MDHHS sent Petitioner a Verification Checklist (VCL) requesting a physician statement stating that Petitioner was disabled.
4. On June 7, 2024, without sending written notice of closure, MDHHS terminated Petitioner's FAP eligibility beginning July 2024 due to student status.

5. Beginning July 2024, MDHHS ended Petitioner's FAP eligibility.
6. On July 30, 2024, MDHHS sent written notice to Petitioner of FAP eligibility termination beginning August 2024.
7. On September 5, 2024, Petitioner 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 requested a hearing to dispute a termination of FAP benefits.¹ Exhibit A, p. 5. A Benefit Notice dated June 7, 2024, stated that MDHHS was terminating Petitioner's FAP eligibility beginning July 2024. Exhibit A, pp. 33-36. Though MDHHS ended Petitioner's FAP eligibility July 2024 and drafted written notice, MDHHS acknowledged it did not send Petitioner notice of the FAP benefit termination until July 30, 2024. The circumstances raise two procedural concerns.

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. 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 pended 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.² *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.³ *Id.*, p. 12.

First, MDHHS cannot halt a client's FAP eligibility before it issues proper written notice; nevertheless, MDHHS did just that when halting Petitioner's FAP benefits beginning July 2024. Thus, the Benefit Notice dated June 7, 2024, was improper because it was never sent to Petitioner.⁴

¹ Petitioner suggested she also disputed a denial and/or termination of FAP benefits stemming from an application dated October 17, 2024. Exhibit A, pp. 38-44. Administrative hearing jurisdiction is limited to MDHHS actions from before a hearing request. If Petitioner disputes MDHHS actions related to the application from October 2024, she may separately request a hearing.

² Circumstances when no notice is required are listed in BAM 220 (July 2020) p. 5.

³ 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.

⁴ Generally, the MDHHS database automatically sends written notice when an adverse action (e.g., benefit closure) occurs. Such written notice is a Notice of Case Action and is computer generated with all

Secondly, when MDHHS sent Petitioner proper written notice on July 30, 2024, it halted Petitioner's FAP eligibility beginning August 2024. If Petitioner's FAP eligibility properly ended, timely notice should have been issued, Timely notice requires factoring the 11-day period and impacting the adverse action in the following benefit month: September 2024 in the present case.

Given the evidence, MDHHS improperly issued timely notice to Petitioner of the FAP benefit action. As a remedy, Petitioner is entitled to a processing of benefit eligibility for July and August 2024. Though MDHHS procedurally failed to properly terminate Petitioner's FAP eligibility, it may have been substantively correct to do so. The analysis will continue to address the substance of the benefit termination. The notice dated July 30, 2024, stated that Petitioner's FAP eligibility was terminated due to Petitioner's student status.

A person in student status must meet certain criteria to be eligible for FAP benefits. A person is in student status if he/she is:

- Age 18 through 49; and
- Enrolled half-time or more in either a:
 - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.
 - Regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245 (July 2023) pp. 3-4.

Petitioner argued that MDHHS's student status policy was anti-education and lacked compassion. Petitioner's argument may be correct; however, the morality of MDHHS policy is not within the jurisdiction of the undersigned. Administrative hearing jurisdiction is limited to whether MDHHS policy was properly followed.

It was not disputed that Petitioner was 18-49 years old. Petitioner's testimony acknowledged being enrolled half-time or more as a college student at the time of the disputed termination. The evidence established that MDHHS properly determined Petitioner to be in student status.

For a person in student status to be eligible for FAP benefits, he or she must meet one of the following criteria:

- Receiving FIP benefits
- Enrolled in an institution of higher education as a result of participation in:
 - A JTPA program.
 - A program under section 236 of the Trade Readjustment Act of 1974 (U. S. C. 2296).
 - Another State or local government employment and training program.
- Physically or mentally unfit for employment.

required information. In the present case, MDHHS inexplicably did not issue a Notice of Case Action and instead issued two Benefit Notices which were manually completed by MDHHS staff: one of which was not sent to Petitioner.

- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year (i.e. work study).
- Providing more than half of the physical care of a group member under the age of six.
- Providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate child care is not available to:
 - Enable the person to attend class and work at least 20 hours per week.
 - Participate in a state or federally-financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12. This includes a person who does not live with his or her spouse, who has parental control over a child who does not live with his or her natural, adoptive or stepparent.

BEM 245 (July 2023) pp. 3-5.

Petitioner also testified she has cauda equina syndrome and is disabled. Petitioner's testimony was consistent with her application dated March 19, 2024, which reported a claimed disability. Exhibit A, pp. 8-13. Petitioner's claim of disability equated to claiming to be physically or mentally unfit for employment. Physical or mental unfitness for employment may be verified by any of the following:

- Award letter or other verification of eligibility for Retirement, Survivors, and Disability Insurance (RSDI) or Supplemental Security Income (SSI) on the basis of disability.
- Award letter or other verification of eligibility for disability benefits issued by government or private sources.
- Statement from an M.D. D.O., or psychologist. BEM 245 (July 2023) pp. 12-13.

It was not disputed that Petitioner was not certified as disabled by a government agency. However, Petitioner could have verified physical unfitness with a letter from a physician.

For all programs, MDHHS is to tell the client what verification is required, how to obtain it, and the due date. BAM 130 (October 2023) 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 sent Petitioner a VCL on May 29, 2024, requesting a physician statement that Petitioner was disabled. Exhibit A, pp. 28-30. It was not disputed that Petitioner did not return to MDHHS a statement of disability from a medical treater until November 18, 2024.⁵ Exhibit A, p. 61.

Petitioner testified that she had difficulties finding a medical provider and obtaining a physician statement. Petitioner's testimony was sincere; however, Petitioner's apparent expectation that MDHHS wait six months for her to submit a written statement of disability is not reasonable. Given the evidence, MDHHS properly terminated Petitioner's FAP eligibility. As discussed during the hearing, Petitioner's recourse is to reapply for FAP benefits.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly issued notice of FAP benefit termination. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reprocess Petitioner's FAP eligibility for July and August 2024 subject to the finding that MDHHS failed to issue proper written notice of FAP benefit termination until July 30, 2024; and
- (2) Issue notice and supplements, if any, in accordance with policy.

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

CG/nr



Christian Gardocki
Administrative Law Judge

⁵ MDHHS emphasized that the submitted statement was unacceptable because it was signed by a physician's assistant. MDHHS also stated that the statement should be acceptable if it cosigned by a physician.

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

BSC4
M. Holden
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B. Cabanaw
MOAHR

Via-First Class Mail :

Petitioner

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