

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-017562
Issue No.: 3002
Agency Case No.: [REDACTED]
Hearing Date: December 2, 2015
County: MACOMB-DISTRICT 20

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on December 2, 2015, from Detroit, Michigan. The Petitioner was represented by Waleed Sadik (Petitioner). The Department of Health and Human Services (Department) was represented by Kathleen Scorpio-Butina, Hearings Facilitator.

ISSUE

Did the Department properly deny Petitioner's Food Assistance Program (FAP) application effective [REDACTED]?

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 [REDACTED], Petitioner applied for FAP benefits.
2. On [REDACTED], Petitioner submitted a hearing request to dispute the FAP benefits. See Exhibit B, p. 7.
3. On [REDACTED], Petitioner signed a Hearing Request Withdrawal regarding his FAP hearing request dated [REDACTED]. See Exhibit B, p. 7.
4. Due to the hearing request withdrawal, the Department appeared to reprocess Petitioner's FAP application and sent him a Verification Checklist (VCL) dated [REDACTED] and it was due back by [REDACTED]. See Exhibit B, pp. 5-6. Specifically, the VCL requested proof of other self-employment, residential address, and employment unknown. See Exhibit B, pp. 5-6.

5. On [REDACTED], Petitioner submitted several self-employment income and expense statements. See Exhibit B, pp. 10-14.
6. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP application was denied effective [REDACTED], ongoing, due to his failure to participate in employment and/or self-sufficiency-related activities without good cause and his failure to provide verification of self-employment payments, employment, and residential address. See Exhibit B, pp. 1-2.
7. On [REDACTED], Petitioner submitted other verifications to the Department. See Exhibit B, p. 10.
8. On [REDACTED], Petitioner filed a hearing request, protesting the Department actions. See Exhibit A, pp. 2-3.

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) [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. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-119b, and Mich Admin Code, R 400.3001-3011.

Preliminary matters

First, Petitioner reapplied for FAP benefits on [REDACTED]. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits were denied effective [REDACTED], ongoing, due to excess income and verification of residential address. See Exhibit B, pp. 3-4. The undersigned lacks the jurisdiction to address Petitioner's Notice of Case Action dated [REDACTED] because it was issued after his hearing request dated [REDACTED]. See BAM 600 (April 2015 and October 2015), pp. 1-6. Petitioner can request another hearing to dispute the Notice of Case Action dated [REDACTED]. See BAM 600, pp. 1-6.

Second, subsequent to Petitioner's hearing request withdrawal, the Department appeared to reprocess Petitioner's FAP application when it sent him a VCL dated [REDACTED]. See Exhibit B, pp. 5-6. The Department ultimately denied the application on [REDACTED]. See Exhibit B, pp. 1-2. Also, there was no evidence presented that any Notice of Case Action was issued to address the [REDACTED] application before the

hearing request withdrawal was even signed. As such, the undersigned has jurisdiction to address Petitioner's Notice of Case Action dated [REDACTED] in accordance with Department policy. See BAM 600, pp. 1-6.

FAP application

On [REDACTED], the Department sent Petitioner a VCL and it was due back by [REDACTED]. See Exhibit B, pp. 5-6. Specifically, the VCL requested proof of other self-employment, residential address, and employment unknown. See Exhibit B, pp. 5-6.

On [REDACTED], Petitioner submitted several self-employment income and expense statements. See Exhibit B, pp. 10-14.

On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP application was denied effective [REDACTED], ongoing, due to his failure to participate in employment and/or self-sufficiency-related activities without good cause and his failure to provide verification of self-employment payments, employment, and residential address. See Exhibit B, pp. 1-2.

At the hearing, the Department originally testified that it did not receive verifications until [REDACTED], which was after the VCL due date. See Exhibit B, p. 10. However, subsequent to the hearing, the Department faxed as Exhibit B for the record, Petitioner's Electronic Case File (ECF). See Exhibit B, p. 10. A review of this documents show that Petitioner submitted several self-employment income and expense statements on [REDACTED]. See Exhibit B, pp. 10-14.

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105 (April 2015), p. 8. This includes completion of necessary forms. BAM 105, p. 8.

For FAP cases, the Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. BAM 130 (October 2014), p. 6. Verifications are considered to be timely if received by the date they are due. BAM 130, p. 6. For electronically transmitted verifications (fax, email or Mi Bridges document upload), the date of the transmission is the receipt date. BAM 130, p. 6. Verifications that are submitted after the close of regular business hours through the drop box or by delivery of a DHHS representative are considered to be received the next business day. BAM 130, p. 6. The Department sends 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. BAM 130, p. 6.

Additionally, the Department does have verification requirements regarding income from self-employment. See BEM 502 (May 2015), pp. 6-9. The Department verifies countable income at application, including a program add, prior to authorizing benefits. See BEM 502, p. 6.

Self-employment verification sources include the following:

- Primary source - Income tax return provided:
 - The client hasn't started or ended self-employment, or received an increase/decrease in income, etc.
 - The tax return is still representative of future income.
 - The client filed a tax return.
- Secondary source - DHS-431, Self-Employment Statement, with all income receipts to support claimed income.
- Third source - DHS-431, Self-Employment Statement, without receipts. When this verification source is used, a Front End Eligibility (FEE) referral is required. Do not open the case until the FEE investigation is completed.

Note: If the total countable self-employment income, (total proceeds minus actual expenses or standard deduction) is \$200 or less a month, a FEE referral is not required.

Exception: Expedited FAP cases must be opened within the expedited standard of promptness regardless if the FEE investigation is complete.

BEM 502, p. 7.

Finally, self-employment expenses include the DHS-431, Self-Employment Statement, with receipts for all programs. BEM 502, p. 8.

Based on the foregoing information and evidence, the Department improperly denied Petitioner's FAP application effective [REDACTED], in accordance with Department policy.

First, the Department denied Petitioner's FAP application based on his failure to participate in employment and/or self-sufficiency-related activities without good cause. See BEM 230B (October 2013), pp. 1-6 (Employment-related activities: FAP). However, the Department failed to present sufficient evidence or testimony as to how Petitioner failed to participate in employment and/or self-sufficiency-related activities. BEM 230B, pp. 1-6. Thus, the Department improperly denied Petitioner's FAP application for this first denial reason.

Second, it is found that Petitioner made a reasonable effort to provide verification of his self-employment expenses before the time period had elapsed. See Exhibit B, pp. 10-14. The Department can argue that the verifications were insufficient to meet requirements set forth in BEM 502, pp. 5-7. However, policy also states 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. BAM 130, p. 6. In this case, though, Petitioner made a reasonable effort to provide the verifications before the time period had elapsed. BAM 130, p. 6. In fact, policy states that a secondary source for verification of self-employment includes the DHS-431, Self-Employment Statement, with all income receipts to support claimed

income. See BEM 502, p. 7. However, there was no evidence presented that the Department sent this form to the Petitioner with the VCL dated [REDACTED]. See Exhibit B, p. 5. The VCL only requested for Petitioner to submit one of the following: recent business receipts to date; recent accounting or other business records to date; or recent income tax return. See Exhibit B, p. 5. Petitioner submitted some business receipts within the VCL due date. See Exhibit B, pp. 10-14. Because Petitioner made a reasonable effort to provide the verifications before the VCL due date, the Department improperly denied his application effective [REDACTED]. See BAM 130, p. 6.

DECISION AND ORDER

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 Department improperly denied Petitioner's FAP application effective [REDACTED], in accordance with Department policy.

Accordingly, the Department's FAP decision is **REVERSED**.

THE DEPARTMENT 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. Initiate re-registration and reprocessing of Petitioner's FAP application dated [REDACTED];
2. Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from [REDACTED], ongoing; and
3. Notify Petitioner of its decision.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **12/2/2015**

Date Mailed: **12/2/2015**

EF / hw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

