STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

RICK SNYDER
GOVERNOR

SHELLY EDGERTON
DIRECTOR

Date Mailed: June 3, 2016
MAHS Docket No.: 16-003209
Agency No.: ███████

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 via three-way telephone conference on June 1, 2016, from Detroit, Michigan. Petitioner was represented by attorney ███████████████████. Petitioner and his son, ████████ ████████, appeared and testified on Petitioner's behalf. The Department of Health and Human Services (Department) was represented by ████████████, Assistant Attorney General. ████████████, Hearing Facilitator, testified on the Department's behalf.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case due to failure to verify requested information?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing recipient of FAP benefits.

2. Petitioner's son was a member of his household and FAP group.

3. Petitioner's son was employed.

4. On November 30, 2015, Petitioner returned a completed a semi-annual contact report and included copies of his son's paystubs for pay dates October 30, 2015

(covering pay period October 19, 2015 to October 25, 2015); November 13, 2015 (covering pay period November 2, 2015 to November 8, 2015); November 20, 2015 (covering pay period November 9, 2015 to November 15, 2015); and November 27, 2015 (covering pay period November 16, 2015 to November 22, 2015) (Exhibit A, pp. 4-9).

5. On December 9, 2015, the Department sent Petitioner a Verification Checklist (VCL) requesting verification of Petitioner's son's wages by December 21, 2015. In the comments section, the Department specified that it needed the son's paystub for pay date November 6, 2015 by December 19, 2015. (Exhibit A, pp. 10-11.)

6. The Department did not receive Petitioner's son's paystub for November 6, 2015.

7. On January 12, 2016, the Department sent Petitioner a Notice of Case Action notifying him that his FAP case was closing effective February 1, 2016 because he had failed to verify his son's income (Exhibit A, pp. 12-15).

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.

Petitioner requested a hearing on March 10, 2016 concerning the closure of his FAP case. While Petitioner subsequently reapplied and was approved for FAP benefits in an amount less than he had previously received, the only Department action at issue at the time of Petitioner's March 10, 2016 hearing request was the closure of his FAP case. Therefore, the issue at the hearing was limited to review of this negative action. See BAM 600 (October 2015), pp. 4-5.

The Department closed Petitioner's FAP case due to his failure to return verifications requested in connection with his semi-annual contact report. The Department sends a semi-annual contact report to clients with countable earnings and a 12-month benefit period at the beginning of the fifth month of the benefit period. BAM 210 (January 2016), p. 8. Clients must submit the signed form, with all of the sections answered

completely and required verifications returned. BAM 210, p. 9. The client's gross earned income from the most current budget is pre-filled on the DHS-1046. BAM 210, p. 10. If the client's gross income has changed by more than $100 from the pre-filled amount on the form, the client must return verification of the past 30 days of earnings with the completed DHS-1046. BAM 210, p. 10. While verification of the past 30 days is not required if the client indicates gross earned income has **not** changed by more than $100, income **must** be budgeted and eligibility run even if the client checks "No" to the questions if the client supplies proof of income. BAM 210, p. 10.

In this case, even though Petitioner marked in his semi-annual contact report submitted to the Department on November 30, 2015 that his household's gross monthly income had not changed by more than $100 from the amount being budgeted by the Department, he included weekly paystubs from his son's employment for pay dates October 30, 2015; November 13, 2015; November 20, 2015; and November 27, 2015 (Exhibit A, pp. 6-9). Because Petitioner included paystubs, the Department was required under Department policy to recalculate the household's FAP eligibility and allotment based on updated income information. The Department testified that because the pay stub for November 6, 2015 was missing, it sent Petitioner the December 9, 2015 VCL requesting verification of the son's wages and specifically requesting the November 6, 2015 paystub. When it did not receive the requested verification, the Department sent Petitioner the January 12, 2016 Notice of Case Action closing his FAP case effective February 1, 2016 for failure to verify income.

At the hearing, Petitioner explained that after he received the VCL he contacted his son's employer who informed him that his son had not worked between October 26, 2015 and November 1, 2015, and, consequently, no paystub was issued to him on November 6, 2015. Petitioner's son confirmed that he had not worked during the period at issue. Petitioner credibly testified that he spoke to his worker to advise her that a paystub dated November 6, 2015 was not available, explaining to her that one was never issued to his son because he did not have any earnings for October 26, 2015 to November 1, 2015. The Department contended that Petitioner could have verified the absence of a November 6, 2015 paystub through a letter from the employer. However, the December 9, 2015 VCL specified that a copy of the paystub was required. If alternative verification was required, the Department should have specified what was required. See BAM 130 (January 2016), p. 3.

Notwithstanding Petitioner's failure to provide any further verification of his son's income from October 26, 2015 to November 1, 2015, at the time the Department requested the verification, it had sufficient information to calculate the son's income for the November 6, 2015 pay date and confirm that no income was received for the pay period October 26, 2015 to November 1, 2015. By calculating the difference between the year-to-date earnings on the paystub dated October 30, 2015 and the paystub dated November 13, 2015 (the paystubs issued the week before and the week after November 6, 2015), the Department could have verified that the only earnings by Petitioner's son from October 26, 2015 to November 8, 2015 were the gross earnings of $157.42 paid to Petitioner in

the November 13, 2015 paystub for the pay period November 2, 2015 to November 8, 2016. Therefore, it follows that Petitioner's son had no earnings for the week of October 26, 2015 to November 1, 2015. Because the Department could use the paystubs provided by Petitioner with his semi-annual to establish the earnings (or, in this case, the lack of earnings) for the period at issue, verification of earnings from the missing paystub were not required. See BAM 130 (January 2016), p. 1. Therefore, the Department did not act in accordance with Department policy when it closed Petitioner's case due to failure to verify requested information.

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 did not act in accordance with Department policy when it closed Petitioner's FAP case effective February 1, 2016.

DECISION AND ORDER

Accordingly, the Department's 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.   Reinstate Petitioner's FAP case effective February 1, 2016;

2.   Reprocess the semi-annual contact report using the information provided in and with the report;

3.   Issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from February 1, 2016 ongoing; and

4.   Notify Petitioner in writing of its decision.

ACE/tlf

Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

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

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

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