



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: March 29, 2017
MAHS Docket No.: 17-002814
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 three-way telephone hearing was held on [REDACTED], from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Family Independence Manager.

ISSUE

Did the Department properly close the Petitioner's Food Assistance Program (FAP) due to excess income?

FINDINGS OF FACT

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

1. The Petitioner was an ongoing recipient of FAP benefits.
2. A Redetermination notice was sent to the Petitioner on [REDACTED], which scheduled an interview on [REDACTED], with a redetermination due date of [REDACTED]. (Exhibit I.)
3. The Petitioner contacted her caseworker on [REDACTED], requesting that her redetermination interview be rescheduled. The Petitioner did not hear back from her caseworker regarding her request for a rescheduled telephone interview.

4. On [REDACTED], a Notice of Missed Interview was sent to the Petitioner advising the Petitioner she must reschedule her interview before [REDACTED] or the redetermination would be denied. (Exhibit I.)
5. While attempting to complete her redetermination, the Petitioner was unable to upload documents, which included proof of income and expenses regarding her husband's self-employment income and expenses.
6. On [REDACTED], the Petitioner contacted the Department requesting a DHS-431 Form so she could complete her self-employment income and expenses as requested by the Department. The Petitioner did not receive a return phone call regarding her inquiry.
7. On [REDACTED], as instructed by the Department, the Petitioner faxed the requested information regarding self-employment income and expenses to the Department. The faxed information was significantly reduced in size and was illegible. The documents were faxed due to a fault in the Department's system regarding Petitioner's account.
8. On [REDACTED], after completing a redetermination with another caseworker, [REDACTED], the redetermination was completed. At the request of the Department, the Petitioner uploaded the documents regarding self-employment income and expenses for the months of [REDACTED].
9. [REDACTED], was the first date where the Petitioner could upload documents into the DHHS system for her account, which finally worked properly after she contacted DHHS tech support so that she could upload the documents.
10. The Department Sent a benefit Notice on [REDACTED], advising the Petitioner that her FAP benefits would close effective [REDACTED], due to her net income of \$ [REDACTED] based on her earned income of \$ [REDACTED] (Exhibit K, pp. 141-142.)
11. The Petitioner requested a timely hearing on [REDACTED], protesting the closure of her FAP case on [REDACTED].

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.

In this matter, the Petitioner's spouse is self-employed as a locksmith. Due to problems with the Petitioner's online DHHS account, she was unable to upload documents to the Department through no fault of the Petitioner as part of completing the redetermination for FAP. At the Department's suggestion, the Petitioner faxed the documents in a timely manner to the Department on [REDACTED]. The documents were received by the Department; however, they were illegible, as they were significantly reduced in size due to being faxed. See for example (Exhibit B, pp. 16-31). Initially, the Petitioner was to have had an interview regarding her redetermination on [REDACTED]; however, the Petitioner timely requested that the interview for the redetermination be rescheduled. The Petitioner requested rescheduling on [REDACTED]. Unfortunately, the Department never returned the Petitioner's call and did not respond to her request to change the redetermination interview. Throughout the period, prior to [REDACTED] commencing on or about [REDACTED], Petitioner attempted to download documents with respect to completing her redetermination; the Petitioner was unable to download documents and contacted DHHS tech support for assistance beginning [REDACTED]. The problem was not fixed until [REDACTED].

The Petitioner kept very detailed business records and notes of her calls and discussions with the Department and her testimony was found to be credible.

Ultimately, the Department did not use the Petitioner's actual business expenses, but instead determined the Petitioner's average monthly self-employment income for the months of [REDACTED] and [REDACTED] using the average for gross sales for the months of [REDACTED], [REDACTED] and [REDACTED], which averages \$ [REDACTED] monthly. The Department then deducted expenses of 25% (\$ [REDACTED] resulting in monthly income of \$ [REDACTED] (Exhibits F, G, H and K.) See also BEM 505 (January 1, 2017), Prospecting Income, p. 6. Department policy with regard to calculating self-employment income is set forth in BEM 502 and provides the following:

Individuals who run their own businesses are self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. BEM 502, January 1, 2017, p. 1.

The amount of self-employment income before any deductions is called total proceeds. Countable income from self-employment equals the total proceeds **minus** allowable expenses of producing the income. If allowable expenses exceed the total proceeds, the amount of the loss cannot offset any other income **except** for farm loss amounts. BEM 502, p. 3.

Allowable expenses (except MAGI related MA) are the **higher** of 25 percent of the total proceeds, or actual expenses, if the client chooses to claim and verify the expenses. BEM 502, p. 3, (emphasis supplied).

Allowable expenses include all of the following:

- Identifiable expenses of labor, stock, raw material, seed, fertilizer, etc.
- Interest and principal on loans for equipment, real estate or income-producing property.
- Insurance premiums on loans for equipment, real estate and other income-producing property.
- Taxes paid on income-producing property.
- Transportation costs while on the job (example: fuel).
- Purchase of capital equipment.
- A child care provider's cost of meals for children. Do **not** allow costs for the provider's own children.
- Any other identifiable expense of producing self-employment income except those listed below. BEM 502, p. 3-4.

Do **not** enter any of the following as self-employment expenses in Bridges:

- A net loss from a previous period.
- Federal, state and local income taxes.
- Personal entertainment or other individual business expenses.
- Money set aside for retirement.
- Depreciation on equipment, real estate or other capital investments.

BEM 502, p. 4.

The Department policy also requires that countable income be verified at redetermination and provides:

The client has primary responsibility for obtaining verification. Do not deny assistance because an individual is unable to verify income. Assist the client in obtaining verification when requested. See BAM 130, VERIFICATION AND COLLATERAL CONTACTS and BEM 702, CDC VERIFICATIONS. BEM 502, p. 6.

Sources for verifying Self-Employment income include:

- 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. BEM 502, p. 7.

In this case the Petitioner verified the countable income by using a secondary source, a DHS 431, Self-Employment Statement with all income receipts to support claimed income. (Exhibits F, G and H.)

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130, (October 1, 2016), p.1.

When verification is scanned or copied and the information is totally or partially illegible, place a copy in the case file.

- If partially legible, document the case with actual verification received such as a lease, paystubs. Include additional details such as whether it was reviewed, if it appears to be authentic, and any visible information such as the date of entry into the U.S., shelter expense. BAM 130, p. 4.

Verifications are considered to be timely if received by the date they are due. For electronically transmitted verifications (fax, email or Mi Bridges document upload), the date of the transmission is the receipt date. Verifications that are submitted after the close of regular business hours through the drop box or by delivery of a MDHHS representative are considered to be received the next business day.

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.7.

In this case, it is determined that the Petitioner, at the Department's request during the redetermination interview, was requested to upload the documents previously faxed to

the Department presumably so they could be reviewed. Based upon the evidence presented, the Department did not compare the actual expenses and provided by the Petitioner on [REDACTED], to determine if those expenses were more than 25% of the gross proceeds. The Petitioner's records, once they were legible, were extremely detailed and complete. See (Exhibits F, G and H).

A review of the Petitioner's [REDACTED] submission of income and expense for self-employment the gross sales was \$ [REDACTED] and the expenses reported with receipts were \$ [REDACTED] leaving income of \$ [REDACTED].

Determining income without using actual receipts, using 25 percent of gross sales is \$ [REDACTED] which when deducted from gross sales leaves income of \$ [REDACTED] [REDACTED]). Thus, as can be seen, the use of actual expenses is the higher of expenses. BEM 502, p. 3. The records presented by the Petitioner are extremely detailed, not only identifying the expenses but also providing receipts and are easy to review to determine expenses when they are legible. Because the Department requested the actual income and expenses records, they should have been considered and reviewed the expenses once they were received. There was no evidence that this occurred.

Thus, based upon these facts and evidence presented, it is determined that the Department did not properly close the Petitioner's FAP case as it did not review the documents once they were received to determine whether the use of actual expenses would be higher than the flat 25 percent. Also, it is determined that the Petitioner provided the documents timely, and at the Department's own request, uploaded the documents to the Department on [REDACTED], once she was able to do so and her DHHS online account was fixed.

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 did not act in accordance with Department policy when it closed the Petitioner's FAP case due to excess income.

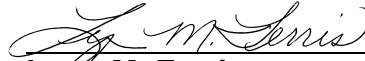
Accordingly, the Department's decision is **REVERSED**.

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. The Department shall reinstate the Petitioner's FAP case and process the case to redetermine the self-employment income consistent with Department policy based upon the income and expenses provided to the Department on [REDACTED], for the months of [REDACTED] [REDACTED] and [REDACTED].

2. The Department shall issue an FAP supplement to the Petitioner for FAP benefits she is otherwise entitled to receive in accordance with Department policy.

LMF/jaf



Lynn M. Ferris

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:

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

DHHS

[REDACTED]

Petitioner

[REDACTED]

[REDACTED]