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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: May 11, 2017
MAHS Docket No.: 17-004473
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; 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 May 3, 2017, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by ██████████, hearing facilitator.

ISSUES

The first issue is whether Petitioner established administrative hearing jurisdiction concerning State Emergency Relief (SER).

The second issue is whether MDHHS properly denied Petitioner's application for FAP benefit replacement.

The third issue is whether MDHHS properly determined 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. Petitioner was an ongoing FAP benefit recipient as part of a 2-person FAP benefit group.
2. Petitioner's child received ██████████/month in Supplemental Security Income (SSI).

3. Petitioner received child support income from September 2016 through [REDACTED] averaging [REDACTED]/month.
4. Petitioner did not verify housing expenses.
5. On [REDACTED], MDHHS determined Petitioner to be eligible for [REDACTED]/month, effective [REDACTED], in part based on [REDACTED]/month in unearned income and [REDACTED] housing expenses.
6. Petitioner did not apply for SER for assistance with a stove or refrigerator.
7. On [REDACTED], Petitioner tried to apply for FAP replacement benefits.
8. On [REDACTED] [REDACTED] [REDACTED], MDHHS did not allow Petitioner to apply for FAP replacement benefits.
9. On [REDACTED], Petitioner requested a hearing, to dispute SER concerning a refrigerator and/or stove, eligibility for FAP-benefit replacement, and FAP eligibility from [REDACTED].

CONCLUSIONS OF LAW

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by MDHHS (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001 through R 400.7049. MDHHS policies are contained in the Services Emergency Relief Manual (ERM).

Petitioner requested a hearing, in part to dispute SER. Petitioner testified her SER dispute specifically concerned a need for stove and refrigerator.

Petitioner's hearing request stated that she had a break-in and was left with no appliances. The statement conflicted with her testimony which stated that her refrigerator broke after a power outage. Whatever circumstances Petitioner claims justify SER, Petitioner has to apply for SER before requesting a hearing to dispute SER.

SER applicants can file or obtain an application until at least 5:00 p.m. each business day. ERM 102 (October 2013), p. 1. [MDHHS is to] accept and register an SER application if the following information is provided: applicant name, address or statement of homelessness, birthdate [, and] applicant's or authorized representative's signature. SER. *Id.*

Petitioner testimony conceded she did not apply for SER. Petitioner's testimony implied she was verbally advised by MDHHS that she needn't bother applying because SER does not cover purchases of refrigerators and/or stoves (the advice appears compliant with ERM 100).

Petitioner's testimony did not imply that she was prevented from applying for SER. Petitioner is not entitled to relief based on verbal statements that she will be denied SER. Thus, Petitioner failed to show any reversible action of MDHHS concerning SER. Due to Petitioner's failure to apply for SER, Petitioner's dispute concerning SER will be dismissed due to a lack of administrative hearing jurisdiction.

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. MDHHS (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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing, in part, to dispute a failure by MDHHS to process a replacement of FAP benefits. Again, Petitioner's dispute is hampered by a failure to apply.

Food Assistance recipients may be issued a replacement of food that has been destroyed in a domestic misfortune or disaster and reported timely. BAM 502 (July 2013), p. 1. Replacements and reauthorizations are processed only if the client reports the loss timely. *Id.* Timely means within 10 days if the loss is due to misfortune or disaster. *Id.* However, if day 10 falls on a weekend or holiday and it is reported on the next workday, it is still considered timely. *Id.*

[MDHHS is to] verify the circumstances through a collateral contact, a community agency, utility company or a home visit, and note it on the DHS-601, Food Replacement Affidavit. *Id.* Discuss with the client the amount of food lost as a result of the misfortune or disaster. *Id.* Replace the amount the client states they have lost up to the value of the current month's allotment. *Id.* The food does not have to come from the current month, however the client must complete the DHS-601 describing the loss. *Id.* If denying a replacement, send the client a DHS-176, Client Notice, within 10 days of the client's request.

It was not disputed that a widely-reported power outage affected many MDHHS clients in March 2017. Petitioner testified her power outage occurred from March 8, 2017, through March 12, 2017. An email from a FAP State Administrative Manager advised MDHHS employees that areas affected by the power outage "can accept requests for replacement food" until March 27, 2017.

It was not disputed that Petitioner appeared at a MDHHS office on [REDACTED], for the purpose of completing a DHS-601. Petitioner testified MDHHS would not provide her with a DHS-601 because it was past the deadline to apply.

It should be noted that MDHHS policy does not appear to require a client to complete a DHS-601 within 10 days (or by 3/27/17, in the present case). MDHHS policy only requires a timely reporting. A reporting could theoretically be accomplished by a telephone call.

Petitioner testified she called MDHHS during her power outage and before the deadline to apply for FAP benefits. Petitioner's testimony was consistent with her hearing request which alleged that she called her specialist numerous times. Petitioner's MDHHS specialist did not appear to rebut the testimony. The testimony should be considered in light of other evidence.

In explaining her need for a refrigerator, Petitioner testified her refrigerator broke shortly after the power outage causing hundreds of dollars in food loss. Petitioner's hearing request stated that she had a break-in and was left with no refrigerator. The contradiction rendered Petitioner's unverified statements to be unreliable.

It is found Petitioner failed to timely report a loss of food to MDHHS. Thus, Petitioner was not entitled to FAP-benefit replacement.

In the SER analysis, Petitioner's dispute was dismissed because she did not bother to apply for SER. It is tempting to similarly dismiss Petitioner's dispute concerning FAP replacement. There is a distinction to be made between the analyses.

SER applications are known to be widely-available. MDHHS clients can apply online for SER and applications are available in most MDHHS office lobbies. The affidavit for FAP replacement is not believed to not be widely available. It is unlikely Petitioner could have completed the required affidavit without MDHHS providing it.

MDHHS policy requires MDHHS to provide applications to clients upon request (see BAM 110 (January 2017), p. 1. Technically, a DHS-601 is not an application, nor is it among the list of documents that must be provided upon request. Functionally, a DHS-601 is an application and intended to be subject to the requirements of BAM 110.

The MDHHS case summary asserted that Petitioner would have been denied because she was too late to apply for FAP replacement. The MDHHS assertion may be correct, however, the circumstance does not justify not providing Petitioner the paperwork for consideration for her claim. It should also be noted that MDHHS policy does not necessarily require clients to report a loss of food within 10 days; policy only requires a timely reporting of the loss.

Petitioner's failure to complete an affidavit for FAP replacement precludes a determination of whether she was entitled to the allegedly lost benefits. MDHHS' failure to allow Petitioner to apply does allow for administrative relief. MDHHS will be ordered to provide Petitioner with a DHS-601. The analysis will proceed to consider Petitioner's final dispute.

Petitioner requested a hearing, in part, to dispute a determination of FAP eligibility. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 1-4) dated [REDACTED]. The notice informed Petitioner of FAP eligibility of [REDACTED] beginning [REDACTED]. Petitioner testimony agreed that [REDACTED] was the earliest month in dispute.

BEM 556 outlines the proper procedure for determining ongoing FAP benefits. The policy requires consideration of countable income and expenses. The presented written notice included a budget summary (Exhibit 1, p. 2) and FAP budget (Exhibit 1, pp. 9-11) listing all relevant FAP-benefit factors. During the hearing, all relevant FAP-benefit factors were discussed with Petitioner.

It was not disputed that Petitioner's son received [REDACTED] in SSI benefits. Petitioner testimony did not concede that her son also received [REDACTED] months in state-issued SSI. MDHHS presented an Other Income- Search (Exhibit 1, p. 4) listing quarterly payments of [REDACTED]; the document was sufficient proof of income for Petitioner. Converting the income into a monthly amount of [REDACTED] justifies finding that Petitioner's son's received [REDACTED] month in SSI.

[For child support income, MDHHS is to] use the average of child support payments received in the past three calendar months, unless changes are expected. BEM 505 (July 2016), p. 4. [MDHHS is to] include the current month if all payments expected for the month have been received. *Id.* Do not include amounts that are unusual and not expected to continue. *Id.*

MDHHS presented Petitioner's child support history (Exhibit 1, p. 8). MDHHS testified that Petitioner's child-support-income history from [REDACTED] through [REDACTED] was considered. Total listed child support was [REDACTED] for [REDACTED], and [REDACTED]. The average child support amount for the 3-month period is [REDACTED] (rounding up to nearest dollar).

MDHHS determined Petitioner's FAP eligibility on [REDACTED]. Consideration was given to determining whether MDHHS should have relied on Petitioner's child-support income from [REDACTED] through [REDACTED] rather than [REDACTED] through [REDACTED].

It is known that the database MDHHS relies on to verify child support income is not necessarily up-to-date through a date of inquiry. There are occasions when the system may be weeks behind. Thus, MDHHS is not faulted for relying on Petitioner's income through [REDACTED] rather than [REDACTED]. It should also be noted that the decision helped Petitioner because her income in [REDACTED] ([REDACTED]) was more than her income from [REDACTED].

Combining the group's SSI and projected child support results in a total income of [REDACTED], the same amount factored by MDHHS. The analysis will proceed to consider Petitioner's expenses.

[MDHHS] uses certain expenses to determine net income for FAP eligibility and benefit levels. BEM 554 (October 2015), p. 1. For groups without a senior (over 60 years old), disabled or disabled veteran (SDV) member, MDHHS considers the following expenses: child care, excess shelter (housing and utilities) up to a capped amount and court-ordered child support and arrearages paid to non-household members (see *Id.*). For groups containing SDV members, MDHHS also considers the medical expenses above [REDACTED] for each SDV group member(s) and an uncapped excess shelter expense. It was not disputed Petitioner's child was a SDV member.

Verified countable medical expenses for SDV groups, child support, and day care expenses are subtracted from a client's monthly countable income. Petitioner conceded not having any such expenses.

Petitioner's FAP benefit group size justifies a standard deduction of [REDACTED] (see RFT 255). The standard deduction is given to all FAP benefit groups, though the amount varies based on the benefit group size. The standard deduction is subtracted from the countable monthly income to calculate the group's adjusted gross income. Petitioner's FAP group's adjusted gross income is found to be [REDACTED].

MDHHS budgeted Petitioner's housing obligation to be [REDACTED]/month. Petitioner testified she was responsible for a land contract payment of [REDACTED]/month.

[MDHHS is to] verify shelter expenses at application and when a change is reported. BEM 554 (January 2017), p. 14. If the client fails to verify a reported change in shelter, remove the old expense until the new expense is verified. *Id.*

Petitioner testimony indicated she was responsible for a [REDACTED]/month housing obligation since 2015. Petitioner testimony also conceded she did not verify the expense. MDHHS cannot be faulted for not factoring an expense which Petitioner failed to verify. MDHHS credited Petitioner with the maximum heat/utility standard of [REDACTED] (see RFT 255). Petitioner's total shelter expenses (housing + utilities) are found to be [REDACTED].

MDHHS only credits FAP benefit groups with an "excess shelter" expense. The excess shelter expense is calculated by subtracting half of Petitioner's adjusted gross income from Petitioner's total shelter obligation. Petitioner's excess shelter amount is found to be [REDACTED] (rounding up to nearest dollar).

The FAP benefit group's net income is determined by taking the group's adjusted gross income and subtracting the allowable excess shelter expense. Petitioner's FAP benefit group's net income is found to be [REDACTED]. A chart listed in RFT 260 is used to determine the proper FAP benefit issuance. Based on Petitioner's group size and net income Petitioner's proper FAP benefit issuance for [REDACTED] is found to be [REDACTED], the same amount calculated by MDHHS.

Petitioner testimony implied a separate dispute concerning FAP eligibility. Petitioner testified that she informed MDHHS that she stopped receiving child support income in

2017. Petitioner's testimony was somewhat consistent with MDHHS testimony indicating Petitioner only received one child support payment in 2017. Petitioner's testimony implied that MDHHS might have owed Petitioner a determination of FAP eligibility based on Petitioner's reporting of stopped income. Consideration was given to finding that Petitioner established administrative hearing jurisdiction for the dispute; ultimately, such consideration was rejected.

Petitioner's hearing request identified child support as disputed, as well an allegation of calling her worker many times. The hearing request did not specifically allege that MDHHS failed to update her income. The allegation should be specifically identified within a hearing request if a hearing is sought for the complaint. The failure by Petitioner to specifically allege the complaint is the basis for finding that administrative jurisdiction is lacking to resolve the dispute within this decision.

It should be noted that MDHHS policy requires MDHHS to process reported changes within 10 days of the reporting. Presented evidence was suggestive that Petitioner reported a change in child support to MDHHS before she requested a hearing. If MDHHS has taken more than 10 days to update Petitioner's FAP eligibility, Petitioner is encouraged to request a hearing to dispute MDHHS' failure to update income information. If Petitioner does so, she should specifically identify her allegation.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner is not entitled to SER when she did not apply for SER. Petitioner's hearing request is **PARTIALLY DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly determined Petitioner to be eligible for [REDACTED] in FAP benefits beginning [REDACTED]. The actions taken by MDHHS are **AFFIRMED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly failed to provide Petitioner with a DHS-601. It is ordered that MDHHS mail Petitioner a DHS-601 within 10 days of the date of mailing of this decision. The actions taken by MDHHS are **REVERSED**.

CG/hw



Christian Gardocki

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]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]