



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: February 1, 2019
MAHS Docket No.: 18-013502
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 telephone hearing was held on January 24, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Pamela Herman, Hearings Facilitator. During the hearing, a 24-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-24, and a 10-page packet of documents was offered and admitted into evidence as Exhibit B, pp. 1-10.

ISSUE

Does the undersigned Administrative Law Judge have jurisdiction to address Petitioner's hearing request alleging that the Department improperly denied Petitioner's application for State Emergency Relief (SER) benefits?

Did the Department properly deny Petitioner's application for Food Assistance Program (FAP) benefits?

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] [REDACTED] 2018, Petitioner submitted to the Department an application for FAP benefits. (Exhibit A, pp. 1-7.)

2. On [REDACTED] [REDACTED] 2018, Petitioner submitted to the Department an application for SER benefits for assistance in paying utilities and rent. (Exhibit B, pp. 4-10.)
3. On September 13, 2018, the Department issued to Petitioner a State Emergency Relief Decision Notice informing Petitioner that her application for SER benefits was denied. The Department denied the request for utility assistance because the request was made outside the “crisis season which runs from November 1 through May 31.” The Department denied the request for rent assistance because Petitioner did not have a court ordered eviction notice. (Exhibit B, pp. 1-3.)
4. Also, on September 13, 2018, the Department issued to Petitioner a Verification Checklist (VCL) requiring Petitioner to submit to the Department verification of numerous eligibility-related factors, including Petitioner’s income, assets, and relevant expenses. Petitioner was required to produce the requested verifications to the Department by September 24, 2018. (Exhibit A, pp. 8-9.)
5. On September 17, 2018, the Department received the vast majority of the information requested from Petitioner. One of the documents was a check stub from an employer named [REDACTED]. The employer included a handwritten statement that the [REDACTED], 2018, check was “Final pay.” (Exhibit A, pp. 10-19.)
6. On September 20, 2018, the Department issued to Petitioner another VCL. This VCL was prompted by the statement on the check stub that the check from Superior was Petitioner’s final pay. As a result of that statement, the Department required Petitioner to confirm that the employment with [REDACTED] had ended. The verifications were due back on October 1, 2018. (Exhibit A, p. 20.)
7. On October 1, 2018, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her FAP application was denied as a result of her alleged failure to complete the interview process. (Exhibit A, pp. 21-23.)
8. On December 14, 2018, Petitioner submitted to the Department a request for hearing objecting to the denial of her SER and FAP applications.

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).

Over the course of two weeks in late August and early September 2018, Petitioner submitted to the Department applications for FAP and SER benefits. Petitioner’s SER application was denied via a September 13, 2018, notice. Petitioner’s FAP application

was denied via an October 1, 2018 notice. Petitioner filed a hearing request objecting to both decisions by the Department.

SER DENIAL

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

On December 14, 2018, Petitioner filed a hearing request objecting to the Department's denial of Petitioner's SER application. Petitioner was notified of the denial on September 13, 2018.

Clients have the right to a hearing to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. Upon receiving a request for hearing, the Department will forward the matter to the Michigan Administrative Hearing System (MAHS) for a hearing before an Administrative Law Judge (ALJ). The ALJ has jurisdiction to hear a case involving any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits, or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. BAM 600 (January 2018), p. 5.

However, the ALJ only has jurisdiction to hear a timely and properly submitted request for hearing. BAM 600 (January 2018), p. 6, provides in relevant part as follows:

The client or [authorized hearing representative] has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days.

Petitioner did not submit a hearing request to the Department within 90 days of September 13, 2018, which was the date she was notified of the Department's denial of her SER application. Because Petitioner's hearing request was untimely, whether or not the Department properly denied Petitioner's SER benefits application is not an issue that this ALJ has the authority to hear or issue a decision upon. Since Petitioner's

request for a hearing with respect to the SER application denial falls outside the ALJ's jurisdiction, Petitioner's request for a hearing on that issue must be dismissed for lack of jurisdiction.

Therefore, Petitioner's December 14, 2018, request for hearing with respect to the Department's denial of Petitioner's application for SER benefits is dismissed for lack of jurisdiction.

FAP DENIAL

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 case, Petitioner objects to the Department's decision to deny her FAP application due to an alleged failure to provide requested verifications. Petitioner applied for FAP benefits on August 30, 2018. The Department's September 13, 2018, VCL required Petitioner to submit verifications related to Petitioner's income, assets, and other eligibility-related information. Petitioner timely provided everything that was requested. On one of the paycheck stubs Petitioner submitted to the Department, Petitioner's former employer wrote "Final pay." Because of that statement, the Department considered that to be a report of ending employment, prompting the issuance of another VCL. Petitioner was required to provide an employer statement or some other proof that her job had ended. Upon receiving that VCL, Petitioner immediately began attempting to contact both [REDACTED] and the Department to figure out what to do. She was unable to communicate with the Department for an extended period of time. On October 1, 2018, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her application for FAP benefits was denied as a result of Petitioner's alleged "failure to complete the interview requirement."

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (April 2017), p. 1. Additionally, the Department must obtain verification when information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BAM 130, page 1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. For FAP cases, the Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is required. BAM 130, p. 7. Verifications are considered to be timely if received by the date they are due. BAM 130, p. 7. For electronically transmitted verifications (fax, email or MI Bridges document upload), the date of the transmission is the receipt date. BAM 130, p. 7. Verifications that are submitted after the close of regular business hours through the drop box or by

delivery of a Department representative are considered to be received the next business day. BAM 130, p. 7. The Department sends a negative action notice when: the client indicates a 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.

Petitioner responded in a timely and reasonable manner to the initial VCL sent on September 13, 2018. When Petitioner received the September 20, 2018, VCL, Petitioner immediately attempted to get information from the Department but was unable to get in contact with anyone for the better part of a week. Petitioner's responses were perfectly reasonable. After all, the September 20, 2018, VCL requested an "employer statement" that Petitioner had ended her job with [REDACTED]. The information provided by Petitioner on September 17, 2018, included an "employer statement" that Petitioner's job with [REDACTED] had ended. Since Petitioner had already provided a document that was responsive to the subsequent VCL, Petitioner's confusion was understandable.

The Department may only send negative case action where an individual indicates a refusal to provide verification or the time limit for providing the verification has passed and the client has not made a reasonable effort to provide it. BAM 130, p. 7. Petitioner never indicated an unwillingness to provide the information, and certainly, timely providing the vast majority of what was asked for but not quite providing enough qualifies as a reasonable effort to provide the information. As neither of the conditions for sending a negative case action were present, the Department was precluded from sending a negative case action. This was simply a case where the information concerning an eligibility factor (employment and income) was arguably incomplete and the Department failed to articulate with specificity what was missing. The Department improperly denied Petitioner's FAP application. Thus, the Department violated policy by sending the negative action notice and denying Petitioner's FAP application.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's FAP application for Petitioner's alleged failure to submit required verifications.

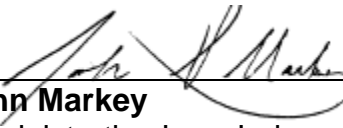
Accordingly, the Department's decision is **REVERSED**.

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. Reregister Petitioner's August 30, 2018 FAP application;

2. Issue any verifications to Petitioner that may still be needed and ensure that the requests are clear as to what is being requested;
3. If Petitioner is eligible for additional FAP benefits, issue FAP supplements Petitioner was eligible to receive from August 30, 2018, but did not as a result of the Department's improper denial of her FAP application; and
4. Notify Petitioner in writing of its decision.

JM/jaf



John Markey
Administrative Law Judge
for Robert Gordon, 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) 763-0155; 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

Carisa Drake
MDHHS-Calhoun-Hearings

Petitioner

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