



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: March 25, 2019
MAHS Docket No.: 19-001402
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 March 20, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Jennifer Sabo, Assistance Payments Supervisor. Russian translation services were provided by [REDACTED].

ISSUE

Did the Department properly calculate Petitioner's self-employment income for purposes of his Food Assistance Program (FAP) benefits?

If the Department properly calculated Petitioner's self-employment income, did the Department properly determine Petitioner's FAP benefit 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. On December 4, 2018, the Department issued a Redetermination to the Petitioner to be completed and returned to the Department by January 4, 2019.
2. On December 28, 2018, the Department received the completed Redetermination from Petitioner and the following items:

- a. Two pay stubs for Petitioner's wife dated December 13, 2018, and each covering the pay period from November 1, 2018, through November 30, 2018;
 - b. A copy of Petitioner's Schedule C for his 2017 business tax filings showing total expenses of \$[REDACTED] and total gross income of \$[REDACTED]
 - c. A copy of Petitioner's mortgage statement showing a payment of \$[REDACTED] per month.
3. On January 3, 2019, the Department received more than 100 pages of copies of Petitioner's self-employment business expenses.
4. On January 7, 2018, the Department issued a Verification Checklist (VCL) to Petitioner requesting proof of claimed business expenses in the amount of \$[REDACTED] by January 17, 2019.
5. On February 4, 2019, the Department issued a Notice of Case Action to Petitioner informing him that his FAP benefits would close effective February 1, 2019, because his group's gross income exceeded the income limit for the group size using old expenses from 2016 for the business because new expenses had not been recognized as received by the Department.
6. On February 12, 2019, the Department received Petitioner's request for hearing disputing the Department's calculation of business expenses and determination of FAP eligibility.
7. On February 14, 2019, the Department issued another Notice of Case Action to Petitioner informing him that his FAP case was closed, effective February 1, 2019, because net income exceeded the net income limit for his group size after consideration of the business expenses submitted on January 3, 2019.
8. On March 15, 2019, the Department discovered additional documents submitted by Petitioner on January 3, 2019, including commercial insurance for his business from [REDACTED], AT&T bills for an iPad and phones, and Spectrum internet bills; the Department reprocessed the case with additional changes but did not certify it or issue a Notice of Case Action reflecting the changes.

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 case, Petitioner disputes the Department's failure to properly consider his business expenses and determination of his FAP eligibility. Policy provides that the Department is required to verify household circumstances, including self-employment income and expenses at application, redetermination, and for reported changes. BAM 130 (April 2017), p. 1; BEM 505 (July 2017), p. 6. When verifying changes, the Department is required to tell the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. In situations where there are discrepancies in the information and verifications provided by the client, the Department is required to provide the client a reasonable opportunity to resolve the discrepancy before determining eligibility. BAM 130, p. 9. In addition, the Department is required to use collateral contacts with a person, organization, or agency to verify information from the client when documentation is not available or when available evidence needs clarification. BAM 130, p. 2. If clarification is required, the Department must ask the client to name a suitable collateral contact, but then the burden is on the Department to obtain the verification once the client has provided the collateral contact. BAM 130, p. 3. Ultimately, if the Department and the client are unable to obtain verification or clarification, the Department is required to use their best judgment. BAM 130, p. 3.

The Department was seemingly unaware that Respondent submitted over 100 pages of verifications for both his personal expenses as well as his business expenses on December 28, 2018, and January 3, 2019, which is why the Department issued the verification checklist. Only after Petitioner's hearing request did the Department realize that Petitioner had submitted a significant number of documents relevant to his self-employment income, but still did not realize the magnitude of documents submitted by Petitioner until the Friday before the hearing in this case. In any case, it is the Department's responsibility to review verifications and act on reported changes within 10 days of becoming aware of the change. BAM 220 (January 2019). The Department failed to review Petitioner's documents within the Standard of Promptness.

Petitioner's greatest concern related to his case was the Department's calculation of his self-employment income. Petitioner owns and operates a trucking company. In reviewing the documents submitted by Petitioner to the Department for the Redetermination and then subsequently submitted as part of Exhibit A in the hearing, the Department considered some, but not all of Petitioner's business expenses. For the majority of expenses, the Department accepted receipts or invoices which listed the date, Petitioner's business name, and the item purchased. It did not accept receipts or invoices where the business name was not visible. For example, the Department did not consider any of the [REDACTED] State Toll Highway Authority receipts found on Exhibit A,

page 76, because no business name is listed on these receipts. Yet the Department was willing to accept the receipts on Exhibit A, page 73, from [REDACTED] and [REDACTED] trucks stops for diesel fuel despite no business name being listed. The Department also refused to consider receipts such as that found on Exhibit A, page 55, because no business name was listed. This receipt shows a purchase of a "Fuel Element." This same store was used to make many purchases related to automotive parts or liquids and usually the same Visa Credit or Debit Card ending in [REDACTED] was used. Upon review of this document it appears as though even if the full document was visible, Petitioner's business name would not appear on the invoice. There were other receipts such as the one seen on Exhibit A, page 28, where the Department declined to consider the expense because no business name was visible, but the invoice shows a portion of the name because "LLC" is visible. The problem arose because the copies received by the Department are photocopied in such a way that the cash register receipt is stapled on top of the invoice blocking the full name and address but leaving the "LLC" visible. Since the Department had a copious number of documents showing Petitioner's business name with the LLC designation, the Department should have been alerted to the name on this receipt and others. Next, the Department conceded at the hearing that some items were not considered because the Department was uncertain what was purchased as seen on Exhibit A page 105. The receipt on this page shows that Petitioner purchased "1 Fuel Power 8oz" for \$8.49. The Department believed that this was a beverage of some kind, but it is actually a fuel additive for Petitioner's truck, the Department did not seek clarification. Finally, Petitioner submitted many months' worth of AT&T receipts which the Department declined to consider citing the fact that the business lines or services are not delineated on the bill. While the actual phone numbers are not labeled as business, personal, or other, the phone numbers are listed and the cost per phone line is also listed. The Department would not need to make much of an effort to determine which lines were business lines and which lines were not.

As discussed above, the Department has the duty to seek clarification from Petitioner or collateral contacts to verify discrepancies or uncertainties related to the verifications provided. The Department failed to clarify with Petitioner or any collateral contacts any of the purchases, receipts, or invoices. Many of the purchases, such as the tolls, could be verified with other proofs such as Bills of Lading showing the origin of a load, the destination of a load, and the dates the haul was supposed to take place. Other purchases such as truck parts, the Department should simply use its best judgment with the understanding that its workers do not have a working knowledge of the pricing of truck parts and credit Petitioner with those expenses. It is not reasonable to expect Petitioner to have his business name on each and every page. The highway toll worker is not going to write the business name on each and every receipt for each and every trucker on the turnpike. The Department should look for patterns in expenses, vehicle identification numbers listed on one verification that includes the business name but is not listed on another, patterns in usage of credit cards to pay for business expenses, and the like to be able to use its best judgement of whether expenses are legitimate. A sit down with Petitioner or a call to the various businesses selling auto parts to

Petitioner may be necessary to explain each expense or to verify that it was for Petitioner's business. The Department's best judgment requires it to use its available resources including appropriate use of collateral contacts and clarifications received from Petitioner.

Since the Department failed to seek clarifications or make collateral contacts, the Department's determination of ineligibility based upon gross income or net income are not in accordance with policy. However, it is noted that for a group size of six, the gross income limit is \$5,624.00 and the net income limit is \$2,812.00 effective October 1, 2018.

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 calculated Petitioner's self-employment income and FAP eligibility.

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 and redetermine Petitioner's eligibility for FAP benefits effective February 1, 2019;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AMTM/jaf



Amanda M. T. Marler
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

Eileen Asam
MDHHS-GrandTraverse-Hearings

Petitioner

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

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M Holden
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