



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 21, 2019
MOAHR Docket No.: 19-002971
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, an in-person hearing was held on May 16, 2019, in Ypsilanti, Michigan. Pursuant to Petitioner's request for accommodations, the hearing was held in a room with no artificial lighting and in the presence of a security guard. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Maia Elvine-Fair, Assistance Payments Supervisor, and Cynthia Powell, Eligibility Specialist. During the hearing, two packets of documents were offered admitted into evidence as Exhibit A, pp. 1-83, and Exhibit 1, pp. 1-19.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits case, effective February 1, 2019?

Did the Department properly deny Petitioner's February 13, 2019 FAP benefits application?

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 from the Department in a group of one.

2. On November 29, 2018, Petitioner began working for [REDACTED]. Petitioner received his first paycheck from [REDACTED] on December 6, 2018. Exhibit A, pp. 8-9.
3. Shortly after Petitioner began working for [REDACTED], the Department received notification through a computer cross match program. The Department then sent Petitioner a New Hire Client Notice requesting information regarding Petitioner's new employment with [REDACTED]. On December 16, 2018, Petitioner sent an email to [REDACTED] answering the questions on the New Hire Client Notice. The following day, [REDACTED] informed Petitioner that an email would not suffice and that he had to follow the instructions on the form, which required Petitioner to fill out the form and submit a signed copy to the Department by the deadline. Petitioner completed the form and returned it along with paycheck stubs to the Department on or about December 18, 2018, which was before the deadline. Exhibit A, pp. 8-11.
4. On December 19, 2018, Petitioner sent an email to [REDACTED] stating that he was done working for [REDACTED]. Petitioner went on to request that the Department not "schedule any face-to-face interviews after this month" as he "might be traveling out-of-state for a few weeks." Exhibit A, p. 12.
5. The following day, [REDACTED] responded and told Petitioner that verifications would have to be submitted. Exhibit A, p. 12.
6. Petitioner responded that same day and stated that does not have verification that he was no longer working at [REDACTED] and that [REDACTED] does not provide the same. Petitioner asked if his statement that he lost the job along with his last paycheck stub would suffice. Exhibit A, p. 13.
7. Fifteen minutes later, [REDACTED] informed Petitioner that the Department would be sending Petitioner a form to have his former employer fill out. Exhibit A, p. 13.
8. Still on December 20, 2018, Petitioner responded by stating that "[REDACTED] will be closing over Christmas break so I can't hand-deliver a form and would prefer they don't know I'm on food stamps." Exhibit A, p. 15.
9. On December 21, 2018, [REDACTED] responded by email and stated that the Department needs verification of loss of employment. [REDACTED] stated that "the MDHHS form states that failure to provide this information by the due date will result in cancellation of your public assistance benefits." Exhibit A, p. 16.
10. On December 21, 2018, the Department issued to Petitioner a Verification Checklist requesting, in relevant part, verification of loss of employment regarding Petitioner's employment with [REDACTED]. Petitioner was informed that failure to return the proofs by January 2, 2019 would result in his FAP case being potentially closed. Exhibit A, pp. 18-19.
11. On December 21, 2018, the Department issued to Petitioner a Verification of Employment form for Petitioner to provide to Piada to have filled out then return to

the Department by January 2, 2019. The form clearly stated in numerous spots that the relevant portions of the form were "To Be Completed By Employer." Exhibit A, pp. 20-21.

12. On December 27, 2018, Petitioner and Ms. Fair exchanged emails regarding the verifications needed. Ms. Fair told Petitioner in no uncertain terms that the Department needs verification that the job had ended and informed Petitioner that a written statement from the employer or letter of separation would suffice. Exhibit A, pp. 24-25.
13. The Department did not receive any verification of loss of employment from Petitioner with respect to his job at [REDACTED].
14. On January 9, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that his FAP case was closing, effective February 1, 2019, due to Petitioner's failure to verify his loss of employment with [REDACTED]. Exhibit A, pp. 27-30.
15. On February 13, 2019, Petitioner submitted to the Department an application for FAP benefits. As in the past, Petitioner did not provide a telephone number as his preferred method of communication is through email. Exhibit A, pp. 31-36.
16. On February 22, 2019, Petitioner exchanged a number of emails back and forth with Ms. Powell and Ms. Fair. In the emails, Petitioner expresses frustration with the closing of his case for failing to obtain the verification of loss of employment that was requested of him and the alleged failure to Ms. Powell and Ms. Fair to adequately address the numerous questions he had concerning the issue. Exhibit A, pp. 37-48.
17. On February 27, 2019, the Department issued to Petitioner an Appointment Notice informing Petitioner that he had an in-person appointment in Ypsilanti, Michigan with the Department scheduled to take place on March 7, 2019 at 9:45 am. The document directed Petitioner to contact the Department before the appointment time if he is unable to make the appointment. Exhibit A, p. 55.
18. On February 27, 2019, Petitioner, Ms. Powell, and Ms. Fair exchanged a number of emails back and forth regarding the interview and verifications issues surrounding Petitioner's FAP case. In the exchanges, Petitioner indicates that he was traveling out of state and expresses concern that he cannot make the appointment, specifically stating that "I don't know if I can make that appointment." Ms. Powell responded, stating that an interview is a requirement at application and that because Petitioner did not provide a phone number, the interview has to be in person. Petitioner was asked when he would return to Michigan from his travels so that a rescheduled appointment could be held. Petitioner responded that he did not know when he would be returning. Ms. Powell told Petitioner that because he did not provide a phone number or a date of return, the appointment would continue as scheduled. Exhibit A, pp. 58-73.

19. Petitioner did not appear for the March 7, 2019 appointment. On March 7, 2019, the Department issued to Petitioner a Notice of Missed Interview informing Petitioner that it was now Petitioner's responsibility to contact the Department to reschedule the interview before March 15, 2019 to avoid the denial of his FAP application. Exhibit A, p. 76.
20. Petitioner did not contact the Department to reschedule the appointment by March 15, 2019.
21. On March 15, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that his application for FAP benefits was denied due to Petitioner's failure to complete the interview requirement. Exhibit A, pp. 77-80.
22. On [REDACTED], 2019, Petitioner submitted to the Department a request for hearing objecting to the closure of his FAP case, effective February 1, 2019, and denial of his February 13, 2019 FAP application.

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.

FAP CLOSURE, EFFECTIVE FEBRUARY 1, 2019

Petitioner's FAP benefits case was closed, effective February 1, 2019, after the Department failed to timely receive verification of Petitioner's alleged loss of employment with [REDACTED].

A client's income or lack thereof is highly relevant in determining the client's level of FAP benefits. BEM 501 (October 2018), p. 6; BEM 550 (January 2017), p. 1; BEM 556 (April 2018), pp. 1-7. Department policy requires clients to cooperate with the local office in determining initial and ongoing eligibility, and this includes the completion of necessary forms like verifications related to starting or stopping employment. BAM 105 (January 2019), pp. 9, 14. The Department is required to verify income that decreases or stops. BEM 500, p. 14. Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130 (April 2017), p. 1. Verification is usually required at application/redetermination and for a

reported change affecting eligibility or benefit level or information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BAM 130, p. 1. Verifications are considered timely if received by the date they are due. BAM 130, p. 7. The Department sends a negative case action when either (1) the client indicates a refusal to provide the verification or (2) the time period has elapsed and the client has not made a reasonable effort to provide the verification. BAM 130, p. 7.

In this case, Petitioner notified the Department on December 19, 2018 that his employment with Piada had ended. Pursuant to policy, the Department issued to Petitioner two December 21, 2018 documents requesting verification of the end of the employment. The documents clearly inform Petitioner that the Department needed verification from the employer that Petitioner's employment had ended as Petitioner's self-attestation of that fact was not sufficient. Petitioner failed to timely return the verifications, and the Department closed Petitioner's FAP benefits case, effective February 1, 2019.

Whether the Department properly closed Petitioner's FAP benefits case depends upon whether Petitioner had made a reasonable effort to provide the verifications by the time the period for providing them had elapsed. If by that time Petitioner's efforts were reasonable, the Department could not take negative action. However, if Petitioner's efforts were not reasonable, the Department's negative action was appropriate.

After reviewing the record, it is found that Petitioner's efforts to provide the verifications were not reasonable, and the Department properly closed Petitioner's FAP benefits case. Despite being told numerous times what was needed, Petitioner failed to make a reasonable effort to gather the required verifications. Over the couple of weeks following the requests for verification of loss of employment, Petitioner inundated the Department witnesses with emails requesting information he already had and/or information that was largely, if not entirely, irrelevant to the matter at hand. He did not, however, make a good faith effort to obtain the information requested.

Petitioner argued at the hearing that his efforts were reasonable and pointed to the string of emails as evidence thereof. Furthermore, Petitioner stated that [REDACTED] was closed for weeks over the holidays, making it impossible for him to obtain the employer statement regarding the alleged end of his employment. Petitioner provided no evidence to support that incredible assertion beyond his own statement, which is not given any weight due to its self-serving nature and Petitioner's overall lack of credibility.¹

It is true that the Department must assist clients who ask for help in completing forms, gathering verifications, and/or understanding written correspondence sent from the Department. BAM 105, p. 15. Additionally, the Department may not take negative action **solely** based on an employer refusing to verify income. BAM 130, p. 14. However, in this case, the Department clearly and repeatedly informed Petitioner what

¹ During the hearing, Petitioner answered questions in great detail so long as those answers were self-serving. In instances where the answer would potentially be prejudicial to his case, Petitioner feigned ignorance or provided evasive and nonresponsive answers.

was needed and why and only took negative action after Petitioner failed to exert a reasonable effort to obtain the necessary verifications. Petitioner demonstrated in both the hearing and his written correspondence that he is an intelligent individual capable of understanding the simple directives from the Department. He was aware that the Department needed the verification of loss of employment by the due date of January 2, 2019 in order to avoid the closure of his FAP benefits case. Petitioner presented no credible evidence that he even tried to contact Piada to have them fill out the verifications by the time they were due. Thus, the failure to obtain the verifications in a timely manner was not **solely** attributable to the employer's failure to verify the employment loss. Rather, the failure to obtain the verifications rested primarily (perhaps solely) on Petitioner's lack of putting forth any reasonable effort to do so. Accordingly, the Department's closure of Petitioner's FAP benefits case, effective February 1, 2019, is affirmed.

FAP APPLICATION DENIAL

Petitioner applied for FAP benefits on February 13, 2019. On February 27, 2019, the Department issued to Petitioner the Appointment Notice informing Petitioner of the in-person appointment scheduled for March 7, 2019 at 9:45 am. Petitioner missed the appointment, triggering the issuance of a Notice of Missed Interview. Petitioner then failed to reschedule the interview appointment, and the Department subsequently denied Petitioner's application via the March 15, 2019 Notice of Case Action.

When an individual files an application for FAP benefits, an interview is required to be held before approving the individual for FAP benefits. BAM 115 (January 2019), pp. 17-21. Policy states that the interviews should generally be scheduled as telephone hearings unless either the applicant requests an in-person interview or the Department specialist determines that an in-person interview is appropriate. BAM 115, pp. 20-21. The purpose of the interview is to explain program requirements to the applicant and to gather information for determining the group's eligibility. BAM 115, p. 17. If an applicant misses an interview appointment, the Department issues a Notice of Missed Interview advising the client that it is now the client's responsibility to reschedule the interview. BAM 115, p. 24. If an applicant misses the interview appointment and fails to reschedule by the 30th day after the application was filed, the Department denies the application on the 30th day. BAM 115, p. 24.

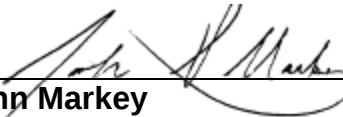
The Department properly notified Petitioner of the scheduled interview upon receiving Petitioner's application for FAP benefits. The interview was scheduled in-person because Petitioner did not provide a telephone number to be reached at. Petitioner failed to appear, failed to reschedule upon receiving the Notice of Missed Interview, and failed to take any reasonable steps to resolve the issue before the negative action date. After 30 days elapsed, the Department sent the Notice of Case Action informing Petitioner that his application was denied for failing to participate in the required interview. The Department followed law and Department policy in taking that action as it could not approve Petitioner's FAP benefits application until completion of an interview.

Petitioner's argument at the hearing boiled down to a request for the interview requirement to be set aside in Petitioner's case because of his special circumstances. The Department is not entitled to waive eligibility requirements. The Department may, however, work with the client in order to ensure that the requirements are met. In this case, the Department attempted to work with Petitioner to assist him in meeting the requirements, but Petitioner refused to cooperate or assist in any meaningful way. Instead, Petitioner obstructed the process and focused on largely irrelevant matters. Based on a review of the record, Petitioner clearly made no effort to meet his obligation to attend the interview or reschedule once he missed the interview. Thus, the Department was compelled to deny his 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 acted in accordance with Department policy when it closed Petitioner's FAP benefits case, effective February 1, 2019, and subsequently denied Petitioner's February 13, 2019 FAP application. Accordingly, the Department's decisions are **AFFIRMED**.

JM/cg



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 Office of Administrative Hearings and Rules (MOAHR).

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

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR 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

Via Email:

MDHHS-Washtenaw-20-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]