



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 28, 2019
MOAHR Docket No.: 19-004128
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 May 22, 2019, from, Michigan. Petitioner appeared. Also appearing on behalf of Petitioner were [REDACTED] and [REDACTED]. The Department of Health and Human Services (Department) was represented by Haysem Hosny, Eligibility Specialist. During the hearing, a 49-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-49.

ISSUE

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

Did the Department properly determine the Medicaid (MA) eligibility of Petitioner and Ms. Asaad (his wife), effective May 1, 2019?

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 and full-coverage MA benefits from the Department. Petitioner's household included Petitioner, [REDACTED] and their two children. Prior to the challenged actions in this case, the group's income eligibility was based solely on Petitioner's income from his employment with [REDACTED] of about \$570 per week.

2. On February 5, 2019, the Department issued to Petitioner a Redetermination form to gather relevant information regarding Petitioner's ongoing eligibility for benefits. Petitioner filled out and returned the form to the Department on or about February 20, 2019. On the form, Petitioner certified that the only income for the household was from Petitioner's employment with [REDACTED]. Exhibit A, pp. 14-21.
3. Sometime March 2019, somebody submitted a fraud complaint to the Department wherein the person reported that Petitioner's wife, [REDACTED], was working as a makeup artist at [REDACTED] and had been for at least one year. Exhibit A, p. 10.
4. Because Petitioner had certified that [REDACTED] was not working or receiving any income during the period indicated on the fraud complaint, the Department investigated the matter.
5. On March 28, 2019, [REDACTED] submitted to the Department a handwritten and signed document stating that she was not working. Exhibit A, p. 32.
6. On April 12, 2019, the Department received a completed Verification of Employment form. The document was allegedly filled out by the owner of [REDACTED] and indicated that [REDACTED] had been working there since January 1, 2018. According to whoever filled out the form, [REDACTED] had rented a chair at the salon for \$10,400 for the year and was serving between 30 and 40 clients per week at a rate of \$45 per client. Exhibit A, pp. 33-34.
7. Upon concluding its investigation, the Department determined that [REDACTED] was earning income from self-employment at [REDACTED]. The Department added \$5,805 per month in income to the group's budget based on 30 clients per week at \$45 per client.
8. On April 17, 2019, the Department issued to Petitioner a Health Care Coverage Determination Notice informing Petitioner that Petitioner and [REDACTED] were eligible for MA benefits, effective May 1, 2019, each subject to a \$3,783 monthly deductible. In reaching the eligibility determination, the Department factored in [REDACTED] alleged income from self-employment at [REDACTED]. Exhibit A, pp. 1-5.
9. On April 17, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that the FAP benefits case was closing, effective May 1, 2019. In reaching the eligibility determination, the Department factored in [REDACTED] alleged income from self-employment at [REDACTED]. Exhibit A, pp. 6-9.
10. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's actions with respect to FAP and MA benefits. Specifically, Petitioner stated that he only makes \$2,292 per month, not the \$6,907 number represented on the April 17, 2019 Notice of Case Action.

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, Petitioner and his wife, [REDACTED] each had MA benefits under the full-coverage Healthy Michigan Plan (HMP). They also had an open FAP benefits case in a group that included them and their two children. Prior to the challenged actions, the group's eligibility was determined while factoring in only income from Petitioner's employment with [REDACTED] which totaled somewhere between \$2,300 and \$2,400 per month. Upon receiving a fraud complaint alleging that [REDACTED] was working and a document alleging Petitioner received self-employment income of \$5,805 per month, the Department factored that income into the budgets, causing the closure of the FAP case and a shift from the full-coverage HMP plan to MA coverage under a plan that subjected Petitioner and [REDACTED] each to a monthly deductible of \$3783.

For both MA and FAP benefits, income is highly relevant to determining eligibility levels. BEM 500 (July 2017), p. 1. When information regarding an eligibility-related factor is unclear, inconsistent, incomplete, or contradictory, the Department must seek to obtain verifications. BAM 130 (April 2017), p. 1. Verification means documentation or other evidence to establish to accuracy of the client's written or verbal statements. BAM 130, p. 1. To obtain verifications, the Department issues written requests detailing what is being requested along with a deadline to provide it. BAM 130, p. 3. If the request is timely responded to, the Department then makes a determination concerning the eligibility-related factor in its best judgment based on the reliable information available. BAM 130, pp. 3, 6.

When the Department received the fraud complaint alleging that [REDACTED] had substantial unreported earnings, information concerning the eligibility-related factor of Petitioner's household income was at that point contradictory. The Department then properly sought to verify Petitioner's household income by requesting further information from Petitioner and the alleged business owner regarding [REDACTED] income. The Department received a statement informing the Department that she did not have any income related to [REDACTED]. The Department also received documentation that purported to be from the owner of [REDACTED] in stating that Petitioner had substantial income from [REDACTED]n. Based on the information it received, the Department concluded that Petitioner had \$5,805 in monthly income from her self-employment at [REDACTED], added all of that income to the budgets, and redetermined eligibility under the programs. Petitioner then submitted a timely hearing request objecting to the Department's determination of the household income.

Clients have the right to contest a Department decision affecting eligibility or benefit levels, including termination of program benefits, when the client believes the decision is incorrect. BAM 600 (October 2018), pp. 1, 5. When a hearing request is filed, the matter is transferred to the Michigan Office of Administrative Hearings and Rules (MOAHR) for a hearing before an Administrative Law Judge. BAM 600, p. 1. At the hearing, the Department representative and client are tasked with presenting their respective cases with reference to the documents provided in the hearing packet or otherwise properly served under the Michigan Administrative Rules. BAM 600, p. 37. After hearing the evidence, the Administrative Law Judge has the duty to review the evidence presented and based on that evidence, determine whether the Department met its burden of proving that the challenged actions were taken in compliance with law and Department policy. BAM 600, p. 39.

During the hearing, the Department witness testified that the Department concluded [REDACTED] was receiving substantial income from her self-employment at [REDACTED] based upon the complaint it received in March along with the documents submitted to the Department outlining [REDACTED] alleged self-employment situation. Those documents included the Verification of Employment form that was admitted into evidence as well as a contract for a chair at the salon that was allegedly signed by [REDACTED]. The Department witness contended that the information presented was sufficient to reach a conclusion not only that [REDACTED] had income that was previously unreported, but that it was also sufficient to conclude that the amount of countable income was \$5,805 per month. That figure, notably, did not include any deduction for the \$10,400 that [REDACTED] allegedly paid for her chair at the salon or any other expenses.

Petitioner objected to that action and has consistently asserted that the household income consisted only of his income from his employment with [REDACTED]. [REDACTED] further testified that she has never had any income, self-employment or otherwise, from working at [REDACTED]. Rather, [REDACTED] stated that she operated at [REDACTED] as an apprentice for some time before deciding earlier this year to break off in an attempt to start her own independent business. [REDACTED] speculated that the

allegations of unreported income stem from a personal vendetta held by [REDACTED] due to [REDACTED] decision to leave her unpaid apprenticeship.

Based on the information presented, the Department failed to meet its burden of proving that it properly concluded that [REDACTED] [REDACTED] had any countable income, let alone its conclusion that she had \$5,805 in countable income per month.¹ The information presented by the Department consisted of documents allegedly prepared by the owner of [REDACTED] and submitted to the Department. However, those documents were not authenticated as nobody associated with [REDACTED] was present at the hearing. The allegations contained therein were directed contradicted at the hearing by [REDACTED] and Petitioner, who have consistently denied receiving any income from work associated with [REDACTED]. Thus, the evidence on one side consists of consistent testimony from people who were present at the hearing while the evidence on the other side consists of allegations purportedly made by the owner of [REDACTED] on an unauthenticated document presented by a Department employee. While the rules of evidence are relaxed in an administrative hearing, they are not completely discounted. To find that the Department substantiated its assertions in this case would amount to relying exclusively on unreliable hearsay statements contained in an unauthenticated document to reach a conclusion that is directly contradicted by consistent live testimony that was subject to cross examination, a patently and self-evidently unfair finding. As the Department failed to meet its burden of proving that [REDACTED] had income, its decisions with respect to FAP and MA based on that finding must be reversed.

To be clear, this is a finding that the Department failed to meet its burden of proving that Petitioner's household income includes \$5,805 in monthly income attributable to [REDACTED] [REDACTED] self-employment at [REDACTED]. It is not a finding that [REDACTED] was not working there at any time. Clearly, the Department had reason to investigate the situation and discovered information during that investigation that caused it to take further action. The testimony from [REDACTED] and Petitioner was not entirely credible and raised a number of questions regarding her relationship with [REDACTED]. This decision is simply based on a finding that the record upon which this decision is based is insufficient to lead to a conclusion that [REDACTED] was in fact earning the income as concluded by the Department, nothing more.

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 closed Petitioner's FAP benefits case, effective May 1, 2019, and determined the MA eligibility of Petitioner and Ms. Asaad, effective May 1, 2019.

DECISION AND ORDER

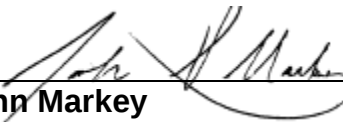
Accordingly, the Department's decision is **REVERSED**.

¹ Notably, no deductions for expenses were applied, even though the document relied upon to reach the \$5,805 monthly income figure included a statement that [REDACTED] had allowable expenses of \$10,400. BEM 502 (July 2017), p. 3.

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 Petitioner's FAP benefits case, effective May 1, 2019;
2. Determine Petitioner's eligibility for FAP benefits going forward pursuant to Department policy;
3. If Petitioner is eligible for benefits that were not issued due to the improper closure of Petitioner's FAP benefits case, promptly issue a supplement;
4. Reinstate Petitioner and [REDACTED] MA benefits case under the HMP, effective May 1, 2019;
5. Determine the MA eligibility of Petitioner and [REDACTED] going forward pursuant to Department policy;
6. If there are any eligibility-related factors that are unclear, inconsistent, contradictory, or incomplete, seek verification pursuant to Department policy; and
7. Notify Petitioner in writing of its decisions pursuant to Department policy.

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-Macomb-36-Hearings
M. Holden
D. Sweeney
D. Smith
EQAD
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]