



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] MI [REDACTED]

Date Mailed: August 7, 2019
MOAHR Docket No.: 19-004459
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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; 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 August 1, 2019, from [REDACTED] Michigan. Petitioner testified and participated via telephone. Callie Dendrinis of Legal Services of South Central Michigan participated as Petitioner's attorney. Cathy Burr, supervisor, testified on behalf of the Michigan Department of Health and Human Services (MDHHS). Chantal Fennessey of the Office of Attorney General participated, via telephone, as the attorney for MDHHS.

ISSUE

The issue is whether MDHHS properly terminated 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. As of December 2018, Petitioner was an ongoing recipient of FAP benefits with a benefit period certified through March 2019.
2. On December 19, 2018, Petitioner submitted an application requesting medical benefits for a child. Petitioner's application reported employment of 30 hours/week for \$8.50/hour. Exhibit A, pp. 13-19.

3. On December 28, 2018, MDHHS mailed Petitioner a Verification Checklist (VCL) requesting proof of employment income. Exhibit A, pp. 20-21. MDHHS also mailed Petitioner a Verification of Employment (VofE) form. The VCL and VofE listed due dates of January 7, 2019. Exhibit A, pp. 22-23.
4. Effective January 2019, MDHHS suspended Petitioner's FAP eligibility until Petitioner returned verification of income.
5. On February 1, 2019, MDHHS mailed Petitioner a Semi-Annual Contact Report (SACR). The SACR stated that updated income verifications must be submitted if income changed by more than \$100. Exhibit A, pp. 24-26.
6. On March 10, 2019, MDHHS mailed Petitioner a Notice of Potential Food Assistance (FAP) Closure form informing Petitioner of a potential closure of FAP benefits beginning April 2019. The stated reason was Petitioner's failure to return a SACR. Exhibit A, p. 27.
7. On March 11, 2019, MDHHS received Petitioner's SACR but no employment income proofs.
8. On March 20, 2019, MDHHS received Petitioner's second SACR but no employment income proofs. Exhibit A, pp. 28-29.
9. As of April 16, 2019, Petitioner had not submitted employment income proofs to MDHHS.
10. On April 16, 2019, MDHHS mailed to Petitioner written notice of FAP closure beginning April 2019. The stated basis for closure was Petitioner's failure to verify employment income. Exhibit A, pp. 5-7.
11. On an unspecified date, MDHHS approved Petitioner for FAP benefits beginning April 16, 2019.
12. On April 26, 2019, Petitioner requested a hearing to dispute the termination of FAP benefits beginning April 2019.

CONCLUSIONS OF LAW

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

Petitioner requested a hearing to dispute a termination of FAP beginning April 2019.¹ A Notice of Case Action dated April 16, 2019, stated that Petitioner's FAP benefits ended due to a failure to verify employment income. Exhibit A, pp. 8-11. The evidence established that Petitioner's alleged failure occurred as part of a Semi-Annual Contact Report.

Bridges sends a Semi-Annual Contact Report (SACR) in the beginning of the fifth month for cases assigned a 12-month benefit period. BAM 210 (April 2019) pp. 10-11. A complete SACR must be submitted by groups with countable earnings and a 12-month benefit period. *Id.*, p. 11. A report is considered complete when all of the sections (including the signature section) of the SACR are answered completely **and** required verifications are returned by the client or client's authorized representative. *Id.* If an expense has changed and the client does not return proof of the expense, but all of the sections on the report are answered completely, specialists are to remove the expense from the appropriate data collection screen in Bridges before running eligibility determination and benefit calculation. *Id.*

The client's gross earned income from his/her most current budget is pre-filled on the SACR. *Id.*, p. 12. If the client's gross income has changed by more than \$100 from the pre-filled amount on the form, he/she must return verification of his/her past 30 days of earnings with his/her completed SACR. *Id.*

If the SACR is not logged in Bridges by the 10th day of the sixth month, Bridges will generate a DHS-1046A, Potential Food Assistance (FAP) Closure, to the client. *Id.*, p. 14. This reminder notice explains that the client must return the SACR and all required verifications by the last day of the month, or the case will close. *Id.* If the client fails to return a complete SACR by the last day of the sixth month then Bridges will automatically close the case. *Id.*

Petitioner's first argument opposing the closure of FAP benefits was that she timely submitted employment income verification to MDHHS. Petitioner testified that on an unspecified date in January 2019 she took the bus to her local MDHHS office and dropped off a letter from her former employer stating that her employment recently ended. Presumably, Petitioner's alleged submission was in response to MDHHS' request for updated employment income information (Exhibit A, p. 20-21) after Petitioner applied for medical benefits in December 2018. Petitioner's claim of submission was consistent with her hearing request which stated she submitted all requested documents to MDHHS. Petitioner's claim of submission was also consistent with MDHHS not closing Petitioner's case in the following three months due to Petitioner's alleged failure to submit income verifications.

¹ Petitioner happened to reapply for FAP benefits in April 2019, and MDHHS approved her application beginning 4/16/19. Thus, the only dispute concerned Petitioner's FAP eligibility from 4/1/19, to 4/15/19.

MDHHS denied ever receiving Petitioner's employment letter. Notably, if receipt of Petitioner's letter was properly processed, Petitioner's letter would be listed in her electronic case file (ECF). Exhibit A, p. 30. MDHHS testimony indicated that had Petitioner dropped-off her employment income letter, she would have been directed to sign a log and scan the document while in the MDHHS office lobby; Petitioner testified that she did not recall signing a log or scanning the document. If Petitioner signed a log upon submitting her employment letter, her testimony could have been verified. Petitioner's testimony is less credible due to the missed opportunity of documenting her claimed submission in a log.

At the time of Petitioner claimed to have submitted her employment letter, she was responding to a VCL dated December 28, 2018, which requested Petitioner's most recent 30 days of income. Petitioner testified that she submitted to MDHHS a letter verifying stopped employment. Petitioner's claim of submitting to MDHHS a letter of stopped employment is less credible because her claimed submission does not correspond to the information requested by MDHHS.

In its Hearing Summary (Exhibit A, p. 1) and throughout the hearing, MDHHS alleged that Petitioner did not submit a SACR to MDHHS until March 20, 2019. In fact, Petitioner submitted a SACR to MDHHS on March 11, 2019 as verified by Petitioner's ECF and the document itself (Exhibit 1, pp. 1-3). The ECF is the most reliable indicator of whether a document is submitted because electronically submitted documents are automatically listed, clients can verify MDHHS' receipt of non-electronic submission through a website. Notably, Petitioner's ECF did not list any submissions from Petitioner from December 28, 2018, until March 11, 2019. Given the evidence, Petitioner did not submit proof of stopped employment to MDHHS before the end of March 2019.

Petitioner's attorney argued that Petitioner's due process was violated because MDHHS did not request proof of Petitioner's stopped employment via a Verification Checklist before closing Petitioner's FAP case. To support the contention, Petitioner's attorney cited policy stating that a VCL is to be sent after a FAP-benefit redetermination interview for any missing verifications allowing 10 days for their return. *Id.*, p. 17.

The policy cited by Petitioner's attorney applies to redeterminations which MDHHS distinguishes from semi-annual contacts. Though MDHHS policy is not unambiguous, MDHHS performs redeterminations at the end of a 12-month period, while semi-annual contacts are performed before the middle of a redetermination period. MDHHS policy concerning SACRs states that clients must submit verifications with the SACR for the reporting to be "complete". SACR policy is silent concerning verification requests such as a VCL presumably because no verification request is needed beyond the SACR itself. The SACR states that if a client's income changed by more than \$100 from the listed amount, then clients are to "include current proof of earnings... from the last 30 days." The SACR further states, "If someone's job has ended in the past 6 months and it was not reported, provide proof, such as a statement from the previous employer." Exhibit A, p.25. The statements on the SACR provide clients with notice of the need for

submissions so that due process is not violated. Further support for distinguishing between redeterminations and semi-annual contacts is that interviews are not required for semi-annual contacts. As noted above, a VCL is to be sent after a FAP-redetermination interview.

Petitioner reported on her SACR that her employment ended. The evidence did not establish that Petitioner submitted proof of stopped employment before the deadline of the end of March 2019. Given the evidence, MDHHS did not err by not mailing Petitioner a VCL before closing Petitioner's FAP benefits.

Petitioner's attorney lastly contended that Petitioner's FAP eligibility closure was erroneous because MDHHS retroactively terminated Petitioner's case. MDHHS mailed a Notice of Case Action to Petitioner on April 16, 2019, informing Petitioner of FAP case closure as of April 1, 2019. MDHHS must give timely notice of actions unless adequate notice or no notice is allowed. BAM 210 (April 2019), p. 4. A timely notice is mailed at least 11 days before the effective date of the negative action to allow clients time to react to the closure. *Id.*, p. 5. One circumstance when adequate notice (a notice of action that is effective as of the notice mailing date) is sufficient is when changes are reported on a SACR; this policy is not applicable to the present case. No notice is needed when a FAP certification period ends and a "redetermination application" was not filed. *Id.*, p. 5. This circumstance does not apply because even if a SACR is a "redetermination application", Petitioner filed one. Her error was not submitting proof of income with her SACR. Application of the MDHHS policy chapter of Case Actions (BAM 220) could justify finding that MDHHS erred by not giving Petitioner timely notice of closure. The present case's circumstances are better evaluated under the policy chapter on Redeterminations (BAM 210) which is deemed to be superior because it exclusively applies to benefit redeterminations including semi-annual contacts.

Under BAM 210, MDHHS is required to send notice of closure if a SACR is not submitted with needed verifications; MDHHS met this requirement by mailing Petitioner a Notice of Potential Food Assistance (FAP) Closure on March 10, 2019, warning that Petitioner had not submitted a SACR and/or "required information". Exhibit A, p. 27. Though Petitioner submitted two SACRs to MDHHS after March 10, 2019, her submissions were insufficient by not including proof of stopped employment. Further notices were not needed. As policy instructs, MDHHS automatically closed Petitioner's FAP case at the end of the month. BAM 210 (April 2019) p. 14.

It is curious that MDHHS mailed a Notice of Case Action to Petitioner on April 16, 2019. The mailing appears to have been superfluous. A superfluous mailing does not render the earlier case actions taken by MDHHS to be erroneous.

Given the evidence, Petitioner did not submit verification of stopped employment income to MDHHS before April 2019. Petitioner's non-submission justified MDHHS allowing Petitioner's FAP case to close at semi-annual contact. Thus, MDHHS properly terminated Petitioner's FAP eligibility beginning April 1, 2019.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's FAP benefits beginning April 2019. The actions taken by MDHHS are **AFFIRMED**.

CG/jaf



Christian Gardocki

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 Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via First Class Mail
Petitioner

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

Counsel for Petitioner

Callie E. Dendrinis
15 S Washington St
Ypsilanti, MI 48197

Via Electronic Mail
Counsel for Respondent

Chantal B. Fennessey
AG-HEFS-MOHR

DHHS

Sarina Baber
MDHHS-Washtenaw-Hearings

BSC4
M Holden
D Sweeney