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GOVERNOR

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

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DIRECTOR

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Date Mailed: October 11, 2019
MOAHR Docket No.: 19-009645
Agency No.: ██████████
Petitioner: ██████████

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, a telephone hearing was held on October 3, 2019, from ██████████ Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Haysem Hosny, hearing facilitator, and Kanita Massey, specialist.

ISSUE

The issue is whether MDHHS properly suspended and 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 May 2019, Petitioner was an ongoing FAP recipient.
2. On an unspecified date in or near May 2019, Petitioner informed MDHHS that a previous reporting concerning employment income was inaccurate and that her actual employment income was much less.
3. On an unspecified date, MDHHS suspended Petitioner's FAP eligibility beginning June 2019.
4. On June 17, 2019, Petitioner's employer submitted to MDHHS a list of Petitioner's time-clock punches and daily tips for May 2019.

5. On July 9, 2019, MDHHS mailed Petitioner a Verification Checklist (VCL) requesting Petitioner's last 30 days of income. The mailing also included a copy of a Verification of Employment.
6. On August 28, 2019, Petitioner requested a hearing to dispute the suspension of FAP benefits.
7. On September 6, 2019, MDHHS terminated Petitioner's FAP eligibility beginning June 2019 due to Petitioner's alleged failure to verify income.

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).

On August 28, 2019, Petitioner requested a hearing to dispute a termination of FAP benefits. MDHHS did not terminate Petitioner's FAP eligibility until 9/6/19 (after Petitioner requested a hearing). Typically, administrative hearing jurisdiction is limited to MDHHS actions taken before a client requests a hearing but the present case is an exception. When Petitioner requested a hearing, she had not received FAP benefits for nearly three full months. MDHHS had not sent notice of a suspension of benefits beginning June 2019. From Petitioner's perspective, she had every reason to believe that MDHHS had stopped her FAP eligibility. Given the circumstances, the analysis will proceed to determine if MDHHS properly suspended and subsequently terminated Petitioner's FAP eligibility. A Notice of Case Action dated September 6, 2019, stated that Petitioner's FAP eligibility ended June 2019 due to Petitioner's failure to verify employment income.

For all programs, MDHHS is to tell the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. MDHHS is to use the DHS-3503, Verification Checklist (VCL), to request verification. *Id.* MDHHS is to allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. *Id.*, p. 7. MDHHS is to send a negative action notice when:

- The client indicates refusal to provide a verification, or
- The time period given has elapsed and the client has not made a reasonable effort to provide it. *Id.*

On July 9, 2019, MDHHS mailed Petitioner a VCL and Verification of Employment requesting 30 days of wage verifications. Exhibit A, pp. 1-7. MDHHS contended that

suspension and case closure were proper based on Petitioner's failure to return proper verification. MDHHS' actions were improper for three reasons.

First, MDHHS provided no basis for initially suspending Petitioner's FAP eligibility beginning June 2019. MDHHS suspended Petitioner's FAP eligibility after Petitioner reported to MDHHS receipt of a lower income than previously reported. Suspending Petitioner's FAP eligibility may have been an attempt by MDHHS to help Petitioner. The suspension allowed Petitioner time to submit updated wage documentation while stalling a June 2019 FAP issuance so that it could be impacted by Petitioner's expected income submission. Even if MDHHS intended to help Petitioner, there is no known policy which justifies suspending a client's benefits due to a reported change in income. Notably, MDHHS imposed the suspension even before verifications were requested in July 2019.¹ The evidence did not support the suspension in Petitioner's FAP eligibility.

Secondly, it was not disputed that MDHHS received income verification of Petitioner's wage for May 2019. MDHHS acknowledged that it received a listing of Petitioner's daily hours and tips for May 2019. MDHHS claimed that the documentation was insufficient because it failed to state what dates that Petitioner was paid; further, determining Petitioner's weekly or biweekly income would have required adding Petitioner's hours and tips. MDHHS stated that Petitioner should have submitted copies of her pay stubs from May 2019 to ensure continued FAP eligibility. The documentation received by MDHHS was indeed more troublesome than a copy of Petitioner's pay stubs. Nevertheless, Petitioner's weekly or biweekly pay could still be calculated from documentation received by MDHHS. MDHHS could have determined Petitioner's pay dates through collateral contact with Petitioner, collateral contact with Petitioner's employer, or by extension from previously submitted pays for Petitioner. Given the evidence, Petitioner's submission of her May 2019 was sufficient verification of wages.

Thirdly, even if MDHHS properly suspended Petitioner's FAP eligibility and properly rejected Petitioner's submission as acceptable verification, MDHHS did not issue proper notice of case closure. There are two types of written notice: adequate and timely. Adequate notice is a written notice sent to the client at the same time an action takes effect (not pended). BEM 220 (April 2019), p. 3. A timely notice is mailed at least 11 days before the intended negative action takes effect; the action is pended to provide the client a chance to react to the proposed action. *Id.*, p. 4. Timely notice is given for a negative action unless policy specifies adequate notice or no notice.² *Id.*

In closing Petitioner's FAP eligibility, Petitioner was entitled to timely notice. Instead, MDHHS issued less than adequate notice by informing Petitioner of a FAP benefit stoppage from three months earlier. Improper notice is a basis to reverse the case closure.

¹ MDHHS also did not send notice of a benefit suspension to Petitioner.

² Circumstances when no notice is required are listed in BEM 220 (April 2019), p. 5. Circumstances when adequate notice is apt are listed in *Id.*, pp. 3-4. None of these circumstances are applicable to the present case.

MDHHS improperly suspended Petitioner's FAP benefits, improperly failed to rely on Petitioner's income documentation as acceptable verification, and improperly failed to issue proper notice. The errors entitle Petitioner to reinstatement of FAP benefits from June 2019.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FAP eligibility beginning June 2019. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Reinstatement of Petitioner's FAP eligibility beginning June 2019 subject to the following findings:
 - a. MDHHS improperly suspended Petitioner's FAP eligibility beginning June 2019;
 - b. MDHHS failed to rely on Petitioner's income documentation from May 2019 as verification of employment income; and
 - c. MDHHS failed to issue timely notice to Petitioner concerning termination of FAP benefits; and
- (2) Issue a supplement of any FAP benefits improperly not issued.

The actions taken by MDHHS are **REVERSED**.

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

DHHS (via electronic mail)

Dawn Tromontine
MDHHS-[REDACTED]-Hearings
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Petitioner (via first class mail)

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