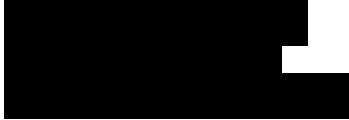




GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: February 21, 2020
MOAHR Docket No.: 20-000333
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, a telephone hearing was held on February 13, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Leah Brooks, assistant attorney general. Jamie Titus, specialist, and Ryan Clemons, manager, testified on behalf of MDHHS.

ISSUES

The first issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility.

The second issue is whether MDHHS properly terminated Petitioner's Medicaid 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 November 4, 2019, MDHHS mailed Petitioner a Redetermination form concerning continuation of FAP benefits.
2. On December 2, 2019, Petitioner timely returned the Redetermination form to MDHHS. Petitioner's only reported income was disability-related benefits of \$968 per month scheduled to begin March 2020. Petitioner also reported an unchanged mortgage obligation.

3. On an unspecified date, Petitioner reported to MDHHS that she previously received various as-needed monetary donations from family to pay her living expenses. Petitioner additionally reported a biweekly employment income of \$40 for caretaker employment.
4. On December 11, 2019, MDHHS initiated a Front-End Eligibility (FEE) investigation concerning the discrepancy between Petitioner's previously reported income and expenses.
5. On December 11, 2019, MDHHS mailed Petitioner a Verification Checklist (VCL) requesting documentation of Petitioner's last 30 days of employment income and letters from persons issuing donation income. Petitioner's due date to return documentation was December 23, 2019.
6. On December 27, 2019, MDHHS received documentation from Petitioner's sister, [REDACTED] (hereinafter, "Sister1") stating that she has given Petitioner money for living expenses but will no longer be able to do so.
7. On December 27, 2019, MDHHS received documentation from Petitioner's sister, [REDACTED] (hereinafter, "Sister3"), stating that she and her siblings have assisted Petitioner with her vehicle and mortgage costs.
8. On December 27, 2019, MDHHS received documentation listing Petitioner's pay dates and amounts from 2019. The document was not signed by the employer.
9. On an unspecified date, Petitioner provided MDHHS with her employer's name and phone number.
10. On an unspecified date, MDHHS attempted to call Petitioner's employer to verify the accuracy of Petitioner's pay document. MDHHS was unable to make telephone contact with Petitioner's employer.
11. On December 30, 2019, MDHHS received documentation from Petitioner's sister, [REDACTED] (hereinafter, "Sister2") stating that she gave Petitioner \$4,000 in February 2019.
12. On December 30, 2019, MDHHS terminated Petitioner's FAP eligibility beginning January 2020 due to Petitioner allegedly failing to verify gift and employment income.
13. On December 30, 2019, MDHHS terminated Petitioner's Medicaid eligibility beginning February 2020 due to Petitioner allegedly failing to verify gift and employment income.
14. On [REDACTED], 2020, Petitioner requested a hearing to dispute the termination of FAP benefits.

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 benefits. Exhibit A, pp. 3-4. A Notice of Case Action dated December 30, 2019, stated that Petitioner's FAP eligibility would end beginning January 2020. Exhibit A, pp. 27-31. One stated reason for termination was Petitioner's failure to verify unearned income. MDHHS testimony clarified that the unearned income was monetary donations from Petitioner's family. MDHHS expected Petitioner's verification as part of the redetermination process.

For FAP benefits, the redetermination process begins when the client files redetermination documents. BAM 210 (January 2018), p. 3. The DHS-3503, Verification Checklist, should be sent after the redetermination interview for any missing verifications allowing 10 days for their return. *Id.*, p. 17. Verifications must be provided by the end of the current benefit period or within 10 days after they are requested, whichever allows more time. *Id.* Benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. *Id.*, p. 3.

For all programs, a donation to an individual by family or friends is the individual's unearned income. BEM 503 (October 2019) p. 10. MDHHS counts the gross amount actually received, if the individual making the donation and the recipient are not members of any common eligibility determination group. *Id.* Income verifications must confirm the gross amount. *Id.*, p. 15. If unknown, the frequency of the payment must also be verified. *Id.*

For all programs, MDHHS is to inform 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. 8. MDHHS may 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.*

If neither the client nor the local office can obtain verification despite a reasonable effort, specialists are to use the best available information. *Id.*, p.3. If no evidence is available, specialist are to use their best judgment. *Id.*

MDHHS mailed Petitioner a VCL on 12/11/19 which requested proof of Petitioner's donations from family. Exhibit A, pp. 15-17. As an example of acceptable verification, the VCL listed a letter from the person making the donation. Elsewhere on the VCL, Petitioner was advised to verify her last 30 days of income.

In response to the request for verification of donation income, MDHHS received three documents from Petitioner's family. A letter dated December 27, 2019 from Sister2, stated that she gave Petitioner \$4,000 in February 2019. Exhibit A, p. 20. A letter dated December 19, 2019 from Sister2, stated that she previously gave Petitioner money for living expenses, but will be unable to do so beginning January 2020. Exhibit A, p. 21. A letter from Sister3 dated December 20, 2019, detailed Petitioner's past health problems, and stated that Petitioner received various financial help from her siblings in the past as well as a \$10,000 inheritance; additionally, the letter stated that beginning January 2020, donations to Petitioner would decrease due to her siblings have limited incomes. Exhibit A, pp. 22-23.

MDHHS contended that Petitioner's verifications for donation income were unacceptable because they did not delineate past or current income for Petitioner. MDHHS is required to verify all income to some degree of certainty concerning amount and frequency.

An undertone of MDHHS' argument was that Petitioner's reported income could not possibly justify her previously reported expenses. MDHHS' skepticism was evidenced by a FEE investigation into the discrepancy between Petitioner's reported expenses and significantly lower income. Exhibit A, pp. 18-19. As the present dispute concerns Petitioner's ongoing FAP eligibility, Petitioner's past reporting to MDHHS is not relevant.

MDHHS was authorized to verify Petitioner's past donation income as a means to project her future income (see BEM 505). During the redetermination process, Petitioner reported that she received help from family, but more importantly, that her familial donations would end. Petitioner's statement was consistent with the letters from her siblings. Petitioner's statement was also consistent with her reporting of an expectation of receiving monthly disability-related income of \$968 beginning March 2020.

Another consideration in whether Petitioner failed to verify donation income is whether MDHHS made a proper verification request. Notably, the VCL did not specify what information was required in the letter other than separately stating that proof of income from the last 30 days was needed. The letters from Petitioner's siblings referenced income given to Petitioner throughout 2019, though none of the income given to Petitioner occurred in the past 30 days. A reasonable inference from the letters is that Petitioner had not received income from her family in the past 30 days. Thus, it cannot be reasonably stated that Petitioner failed to comply with the VCL.

MDHHS seemed to reject the letters from Petitioner's siblings partially due to the lack of certainty in future income for Petitioner. Some appreciation can be given for MDHHS' concern, however, the nature of donations from family is that it depends on a family

member's ability and willingness to help, as well as the recipient's needs. In other words, it is not easily predictable

Given Petitioner's circumstances, Petitioner did not refuse to verify income and Petitioner's efforts were reasonable in attempting to verify donation income. Thus, MDHHS did not have a basis to take a negative action (i.e. case closure) for Petitioner's alleged failure to verify donation income.

MDHHS contended that a second reason justified closure of FAP eligibility. The Notice of Case Action dated December 30, 2019, stated that Petitioner's FAP eligibility would end due to Petitioner's failure to verify employment income.

Wages are the pay an employee receives from another. BEM 501 (October 2019) p. 6. For FAP benefits, all countable wages must be verified. *Id.*, p. 9. Acceptable verification includes a signed statement from the employer listing all required information, such as gross amounts and frequency. *Id.*, p. 11.

The VCL mailed to Petitioner on 12/11/19, also requested proof of Petitioner's employment income from the last 30 days. Listed examples of acceptable proofs included an earnings statement. In response, Petitioner submitted to MDHHS handwritten documents listing Petitioner's pay dates and amounts. MDHHS rejected the document because it was not signed by Petitioner's employer. As policy requires a signed document, MDHHS would be correct to pursue further verification, such as a collateral contact from the employer and/or an updated verification.

The VCL sent to Petitioner listed an earning statement as an example of acceptable verification. Technically, Petitioner returned an unsigned earnings statement to MDHHS. MDHHS would be correct in determining that Petitioner's verification was not acceptable. Problematic for MDHHS is that it did not properly inform Petitioner of the type of verification which was required.

To its credit, MDHHS attempted to call Petitioner's employer to authenticate the unsigned earning statement. MDHHS credibly testified that calls to the individual were unsuccessful.

Petitioner's employment happened to be of an informal nature. Petitioner received \$40 biweekly for providing caretaker services to an individual. Thus, Petitioner's employer was someone who was presumably unable to take care of themselves. In such a context, an employer's failure to sign an earning statement is unsurprising; the same can be stated for Petitioner's employer's failure to answer a telephone call from MDHHS.

Given the evidence, MDHHS did not properly inform Petitioner of the need for a signed earnings statement. Additionally, Petitioner made reasonable efforts to verify donation and employment income and did not refuse to verify income. Thus, the termination of Petitioner's FAP eligibility was improper.

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

Petitioner also requested a hearing concerning Medicaid eligibility. Evidence was not taken to verify the negative action taken or the reason for the action. Given the evidence, MDHHS likely initiated a termination of Medicaid on the same date and for the same reason that Petitioner's FAP eligibility was threatened.

For FAP benefits, a closure for failure to verify information as part of a redetermination would be effective immediately after the benefit period; in this case, January 2020. For Medicaid benefits, the closure is effective after a timely negative action period of at least 11 days (see BAM 220); thus, a Medicaid closure in the present case likely began February 2020.


Other than the context of the redetermination for FAP benefits, the policy and analysis used to determine whether Petitioner's FAP eligibility properly closed, applies to determining whether Petitioner's Medicaid eligibility properly closed. Thus, it is found that MDHHS also improperly terminated Petitioner's Medicaid eligibility.

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 and MA eligibility. MDHHS is ordered to commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reinstate Petitioner's FAP eligibility beginning January 2020 subject to the finding that Petitioner made reasonable efforts to verify donation and employment income;
 - (2) Reinstate Petitioner's MA eligibility beginning February 2020 subject to the finding that Petitioner made reasonable efforts to verify donation and employment income;
 - (3) Process Petitioner's ongoing FAP and MA eligibility accordingly.
- The actions taken by MDHHS are **REVERSED**.

CG/cg



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 Email:

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

Petitioner – Via First-Class Mail:

