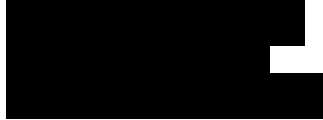




GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: February 19, 2020
MOAHR Docket No.: 20-000334
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 Alicia Mills, specialist, and Candace Baker, manager.

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 October 2019, Petitioner was an ongoing recipient of FAP benefits.
2. On October 30, 2019, MDHHS mailed Petitioner a New Hire Client Notice regarding Petitioner's employment with TSFR Burger (hereinafter, "Employer").
3. On November 12, 2019, Petitioner returned to MDHHS a completed New Hire Client Notice, along with check stubs covering the biweekly pay periods from October 7, 2019, through November 3, 2019; Petitioner's pay dates were October 28, 2019, and November 8, 2019, respectively.

4. On December 11, 2019, MDHHS mailed Petitioner a Verification Checklist requesting updated income information because Petitioner's pay dates were less than 14 days apart.
5. On December 31, 2019, MDHHS terminated Petitioner's FAP eligibility beginning February 2020.
6. 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. 2-3. A Notice of Case Action dated December 31, 2019, stated that Petitioner's FAP eligibility would end February 2020 due to a failure to verify earned income. Exhibit A, pp. 11-15.

Wages are the pay an employee receives from another individual organization or S-Corp/LLC. BEM 501 (October 2019) p. 6. For FAP, wages must be verified at application, program add, member add, redetermination, or whenever otherwise required by policy. *Id.*, pp. 9-10

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.*

MDHHS testified that Petitioner was mailed a VCL on December 11, 2019, requesting verification of her wages from the past 30 days. MDHHS further testified that Petitioner failed to return verifications, and therefore, MDHHS properly terminated Petitioner's FAP eligibility. For purposes of this decision, it will be accepted that Petitioner failed to return verifications in response to a VCL. For a termination based on a failure to verify income to be valid, MDHHS must establish that the request for verification was authorized.

The relevant actions began with MDHHS mailing Petitioner a New Hire Client Notice on October 30, 2019 requesting pay information concerning income from Employer. Petitioner was given a due date of November 12, 2019. Petitioner returned a completed New Hire Client Notice to MDHHS on the due date, along with two pay documents. Exhibit A, pp. 5-8. The two biweekly pay documents returned by Petitioner listed pay dates of October 28, 2019, and November 8, 2019. MDHHS contended that Petitioner's pay documents failed to adequately verify her income because the pay dates were not 14 days apart; Petitioner's pay documents reflected pay dates separated by 11 days.

Biweekly pay dates are typically 14 days apart; however, Petitioner's pay documents clearly covered two biweekly pay periods. Each pay document listed pay periods which were 14 days in length. Put together, Petitioner's pay documents covered pay periods from October 7, 2019, through November 3, 2019. Under the circumstances, MDHHS had no authority to request additional pay documents from Petitioner. At most, MDHHS needed only to clarify why Petitioner's pay dates were not 14 days apart. Additional pay documents would not provide such clarity and no other basis for requesting additional pays was given.

Given the evidence, MDHHS failed to establish a basis for requesting income verification from Petitioner on December 11, 2019. Thus, the corresponding termination of FAP benefits based on Petitioner failing to respond to the request was improper. Petitioner's remedy is reinstatement of her FAP eligibility.

During the hearing, Petitioner seemed to raise a second dispute with MDHHS. Petitioner testified that she verbally reported to her specialist in November 2019 that she lost her employment. Petitioner further testified that her specialist ignored her reporting. Petitioner's testimony implied a benefit dispute over an alleged reporting of stopped employment income. Petitioner's written hearing request did not imply any dispute other than over the closure of FAP benefits. Thus, an analysis will not be undertaken to address whether MDHHS failed to process Petitioner's alleged reporting of job income loss.

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. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reinstate Petitioner's FAP eligibility beginning February 2020, subject to the finding that MDHHS did not establish a valid basis for requesting income verification from Petitioner; and
- (2) In accordance with policy, issue a supplement for any benefits improperly not issued.

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
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

