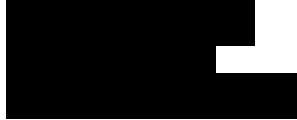




GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: February 20, 2020
MOAHR Docket No.: 20-000384
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 Michael Butler, manager, and Jonathan Davis, specialist.

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 as a simplified reporter.
2. On October 1, 2019, MDHHS mailed Petitioner a Semi-Annual Contact Report (SACR) concerning Petitioner's FAP eligibility beginning December 2019.
3. On November 27, 2019, Petitioner returned the SACR to MDHHS. Petitioner reported that his employment income had not changed from \$276 by more than \$100. Additionally, Petitioner reported no change in earnings due to a change in employment.
4. On November 27, 2019, MDHHS received documentation that Petitioner received income from five different employers in 2019. Of the five employers,

Petitioner received income in November 2019 from only [REDACTED] (hereinafter, "Employer1") and [REDACTED] (hereinafter, "Employer2"). For Employer1, Petitioner received the following gross income: \$226.88 on November 8, 2019. For Employer2, Petitioner received the following gross income: \$490.75 on November 15, 2019, and \$507 on November 22, 2019.

5. On November 27, 2019, MDHHS determined Petitioner's monthly employment gross income to be \$4,104.
6. On November 27, 2019, MDHHS terminated Petitioner's FAP eligibility beginning December 2019 due to excess income.
7. 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 verbally requested a hearing to dispute a termination of FAP benefits beginning December 2019.¹ Exhibit A, p. 3. A Notice of Case Action dated November 27, 2019, stated that Petitioner's FAP eligibility would stop beginning December 2019 due to excess income. Exhibit A, pp. 4-8.

For simplified reporters, 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.*

In the present case, Petitioner returned a SACR to MDHHS on November 27, 2019. Exhibit A, pp. 9-11. The stated due date for Petitioner to return the SACR was November 1, 2019. Though Petitioner returned the form well past the due date, MDHHS properly processed the document because it was submitted during Petitioner's active benefit period.

¹ Clients may verbally request hearings to dispute FAP eligibility. BAM 600 (July 2019) p. 2.

To its credit, MDHHS processed Petitioner's SACR on the same date he submitted it to MDHHS. In accordance with policy, and prior to processing Petitioner's SACR, Petitioner's specialist checked MDHHS' automated databases for information about Petitioner's income. As a result of the check, MDHHS discovered that Petitioner received income from five different employers during 2019.

MDHHS' Hearing Summary implied that Petitioner's past employment and/or inactive employment income was relevant because it should have been previously reported. MDHHS claimed that all clients must report changes in employment income, but this is not accurate. Simplified reporters are under no obligation to report any changes to MDHHS other than a monthly gross income exceeding the simplified reporting income limit. BAM 200 (October 2019) p. 1. MDHHS' testimony acknowledged that Petitioner was a simplified reporter. Thus, Petitioner had no obligation, prior to returning the SACR, to report employment changes other than exceeding the simplified reporting income limit. MDHHS did not present evidence that any of its actions were taken because Petitioner had income exceeding the simplified reporting income limit. Thus, Petitioner's past and/or inactive employment income is not relevant to the analysis.

In processing Petitioner's ongoing FAP eligibility, MDHHS should have been concerned with Petitioner's ongoing employment income. Notably, Petitioner reported on his SACR that his income had not changed from \$276 by more than \$100 and that his earnings had not changed due to a change in employment. Each of Petitioner's statements appear to be inaccurate.

MDHHS presented theworknumber.com documentation from Employer1 (Exhibit A, pp. 17-18) and Employer2 (Exhibit A, pp. 23-24). The documents listed a biweekly gross pay to Petitioner in November 2019 of \$226.88 on November 8, 2019, from Employer1. For Employer2, Petitioner received gross weekly pays of \$490.75 on November 15, 2019, and \$507 on November 22, 2019.

During the hearing, Petitioner testified that he did not work for Employer2 and that any income reported by theworknumber.com is wrong. Petitioner testified further that he suspects MDHHS of fraudulently creating the documents to make it appear that he received income from Employer2. There was no reliable evidence to support Petitioner's claim of fraud by MDHHS. The documents are an appropriate verification to determine Petitioner's income for purposes of FAP eligibility.

FAP budget pages (Exhibit A, pp. 25-26) and Petitioner's closure notice each stated that MDHHS calculated a gross monthly income of \$4,104 for Petitioner. During the hearing, MDHHS could not explain how a monthly gross income of \$4,104 for Petitioner was calculated from the presented evidence. At most, MDHHS could have projected Petitioner's gross biweekly pay of \$226.88, and his weekly pays of \$490.75 and \$507. After factoring weekly and biweekly income conversions (see BEM 505), the highest employment income that could be calculated for Petitioner would not exceed \$2,650.²

² MDHHS converts weekly income to a monthly income by multiplying the average weekly income by 4.3. A multiplier of 2.15 is used to convert average biweekly income into a monthly income.

Given the evidence, MDHHS failed to establish that Petitioner's income was correctly calculated. Thus, the closure of Petitioner's FAP eligibility cannot be affirmed. Petitioner's is entitled to a remedy of a recalculation of his employment income. This non-specific remedy merits further discussion.

Petitioner should be aware of the possibility that a recalculation of income may still result in FAP-benefit termination. The above analysis only found that, given the evidence, MDHHS wrongly calculated Petitioner's income to be \$4,104. Based on Petitioner's weekly gross income of approximately \$500 from Employer2, MDHHS could calculate an income for Petitioner to be less than \$4,104, yet still above the gross income limit.

Also, a theoretically possibility exists that theworknumber.com reported inaccurate information to MDHHS. During the hearing, Petitioner requested additional time to submit evidence that he did not work for Employer2. Petitioner's request was denied because even if he could prove never working for Employer2, his administrative remedy would not be impacted. Petitioner was instead advised to submit to MDHHS any proof that he did not work for Employer2 so that it may be considered in a benefit recalculation. Specifically, Petitioner was advised to obtain a letter from Employer2, preferably on Employer2's letterhead, stating that his income information was wrongly or fraudulently added to theworknumber.com. Such documentation should also include the name and phone number of a contact from Employer2 so that MDHHS could corroborate the content of such a letter.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Petitioner's FAP eligibility was properly terminated. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

(1) Redetermine Petitioner's FAP eligibility beginning December 2019 subject to the finding that MDHHS improperly calculated Petitioner's gross employment income; and

(2) Issue notice of Petitioner's updated FAP eligibility in accordance with policy.

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-Wayne-55-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

