



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]
Date Mailed: January 27, 2021
MOAHR Docket No.: 20-007399
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 hearing was held via telephone conference on January 20, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Eileen Kott, manager, and Dale Daniely, specialist.

ISSUE

The issue is whether MDHHS properly suspended 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 2020, Petitioner was an ongoing FAP recipient with ongoing self-employment and unemployment income.
2. On October 26, 2020, MDHHS sent Petitioner a Verification Checklist requesting proof of Petitioner's self-employment income.
3. On November 14, 2020, MDHHS initiated termination of Petitioner's FAP eligibility beginning January 2021 due to a failure to verify self-employment income.

4. On [REDACTED] 2020, Petitioner requested a hearing to dispute the termination of FAP benefits.
5. On November 24, 2020, MDHHS received verification of Petitioner's self-employment income.
6. As of January 2021, Petitioner had not reported or verified unemployment income.
7. As of January 2021, Petitioner's FAP eligibility was suspended while MDHHS awaited Petitioner's unemployment income verification.

CONCLUSIONS OF LAW

The Food Assistance Program [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. MDHHS 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 November 14, 2020, stated that Petitioner's FAP eligibility would stop beginning January 2021 due to a failure to verify self-employment income. Exhibit A, pp. 23-26.

For all programs, MDHHS is to send a VCL to request verification. BAM 130 (April 2017), p. 3. 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 mailed Petitioner a VCL on October 26, 2020, requesting proof of Petitioner's self-employment income. Exhibit A, pp. 5-6. The stated due date was November 5, 2020. Though there were questions as to when Petitioner complied with the VCL request, MDHS testimony acknowledged possessing acceptable self-employment income verification as of November 24, 2020.

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.¹ *Id.*

Under the present case's circumstances, timely notice of FAP closure was proper. Thus, Petitioner had at least 11 days from November 14, 2020, to correct her alleged failure to verify self-employment income. Petitioner's undisputed compliance on November 24, 2020, entitled Petitioner to a processing of FAP eligibility because of her compliance within 11 days of timely notice issuance. MDHHS could not explain why Petitioner's FAP eligibility was not processed shortly after November 24, 2020. MDHHS did state that Petitioner's FAP eligibility was recently reviewed and her benefits are not closed. Instead, Petitioner's FAP eligibility is suspended while MDHHS is awaiting verification of Petitioner's unemployment income.

Petitioner's testimony acknowledged that she received ongoing unemployment income which was not reported until shortly before January 14, 2021. Non-excluded income must be verified at redetermination or when a change is reported. BEM 503 (September 2020) p. 43. Unemployment income is countable in determining FAP eligibility. *Id.*, p. 38. As unemployment income must be verified, MDHHS could not process Petitioner's FAP eligibility for January 2021. Thus, Petitioner is not entitled to an order that MDHHS process her FAP eligibility for January 2021. If MDHHS does not process Petitioner's FAP eligibility after unemployment income is verified, then a new hearing request would be proper.

¹ Circumstances when no notice is required are listed in BEM 220 (April 2019), p. 5. Circumstances when adequate notice is proper are listed in *Id.*, pp. 3-4. None of these circumstances are applicable to the present case.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly suspended Petitioner's FAP eligibility for January 2021 due to awaiting verification of Petitioner's unemployment income. The actions taken by MDHHS are **AFFIRMED**.

CG/tm



Christian Gardocki

Administrative Law Judge
for Elizabeth Hertel, 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-76-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]