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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

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Date Mailed: September 29, 2017
MAHS Docket No.: 17-008510-RECON
Agency No.: ██████████
Petitioner: ██████████

SUPERVISING ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

DECISION AND ORDER OF RECONSIDERATION

This matter is before the undersigned Supervising Administrative Law Judge pursuant to the timely Request for Rehearing/Reconsideration submitted by Petitioner Trina Manning of the Hearing Decision issued by the assigned Administrative Law Judge at the conclusion of the hearing conducted on July 26, 2017, and mailed on August 4, 2017, in the above-captioned matter.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Reconsideration was mailed on September 29, 2017.

ISSUE

Did the ALJ misapply policy in determining Petitioner's self-employment income for the calculation of her Food Assistance Program (FAP) benefit allotment?

FINDINGS OF FACT

The undersigned Administrative Law Manager, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On July 26, 2017, a hearing was held in the above captioned matter resulting in a Hearing Decision mailed on August 4, 2017.

2. The Findings of Fact numbers 1 through 4 in the Hearing Decision are incorporated by reference.
3. On [REDACTED], 2017, the Michigan Administrative Hearing System (MAHS) received Petitioner's request for reconsideration and/or rehearing.
4. On September 29, 2017, MAHS granted the request for reconsideration.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Reference Tables Manual (RFT), and Emergency Relief Manual (ERM).

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.

Petitioner disputed the ALJ's calculation of her self-employment income in the determination of her FAP benefits. For FAP purposes, countable income from self-employment equals (i) the total proceeds of self-employment **minus** (ii) allowable expenses of producing the income. BEM 502 (January 2017), p. 3. Under Department policy, self-employment *income* is verified as follows:

Primary source: Income tax return is used provided that (i) the client has not started or ended self-employment, or received an increase/decrease in income, etc., (ii) the tax return is still representative of future income, and (iii) the client filed a tax return.

Secondary source: DHS-431, Self-Employment Statement, with all income receipts to support claimed income.

Third source: DHS-431, Self-Employment Statement, without receipts.

BEM 502, p. 7.

For FAP, self-employment *expenses* are verified through a DHS-431, self-employment statement, with receipts. BEM 502, p. 7.

In this case, Petitioner reported self-employment income from her craft business in the redetermination she submitted to the Department on May 26, 2017 (Exhibit A, pp. 1-8). With the redetermination, Petitioner submitted a copy of her 1040 tax return, including

her Schedule C, profit or loss from business, as well as a four-page spreadsheet of income and expenses that she asserted was prepared by her accountant (Exhibit A, pp. 9-12, 25-28).

In calculating her income from self-employment, the Department took the [REDACTED] in gross self-employment income shown on Petitioner's Schedule C, divided it by 12 to determine monthly gross income of \$[REDACTED]. The Department used 25% of the \$[REDACTED] in gross monthly self-employment income to arrive at monthly expenses of \$98.15. The gross monthly self-employment in [REDACTED] [REDACTED] \$294, as shown on the FAP budget presented by the Department for June 1, 2017 ongoing (Exhibit A, pp. 25).

Petitioner contends that her expenses greatly exceeded 25% of her self-employment income and argued at the hearing that she had attempted to submit her receipts but was advised that it was not necessary to do so. Department policy provides that the Department must give the client a reasonable opportunity to resolve any discrepancy between her statements and information from another source. BAM 130 (April 2017), p. 9. When verification is required, the Department must send the client a verification checklist telling the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3.

Petitioner's 2016 1040 tax return showed business income of \$[REDACTED] (Exhibit A, p. 11). The spreadsheet completed by Petitioner's accountant contained a detailed monthly breakdown of inventory expenses and overhead expenses (including rent, phone, internet, mileage, and office). A review of this prepared document shows monthly net profit from Petitioner's craft business considerably less than [REDACTED]. Despite this evidence, the Department did not send Petitioner a VCL requesting verification of expenses via receipts. Given the information Petitioner provided to the Department that was contrary to the Department's calculation of her self-employment income, the Department did not act in accordance with Department policy when it failed to request verification of actual expenses, particularly where Petitioner attempted to provide the receipts to the Department but was advised it was not necessary to do so.

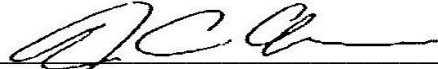
Therefore, Petitioner has established that the ALJ misapplied manual policy or law in the Hearing Decision resulting in an incorrect hearing decision.

DECISION AND ORDER

Accordingly, the ALJ's Hearing Decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION ON RECONSIDERATION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Recalculate Petitioner's FAP budget for June 1, 2017 ongoing if receipts for self-employment expenses are provided upon proper request;
2. If Petitioner is eligible for additional FAP benefits, issue a supplement to Petitioner for FAP benefits she was eligible to receive but did not from June 1, 2017 ongoing; and
3. Notify Petitioner in writing of its decision.



Alice C. Elkin
Supervising Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System.

DHHS

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Petitioner

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