



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED], MI [REDACTED]

Date Mailed: October 23, 2020  
MOAHR Docket No.: 20-003218  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris**

### **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 September 16, 2020, from Clawson, Michigan. An Order of Continuance of Hearing was issued on September 25, 2020 due the hearing not being completed in the time available and was resumed, and the record was closed on October 14, 2020. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by Aisha Caldwell, Assistance Payments Worker.

### **ISSUE**

Did the Department properly deny the Petitioner's Food Assistance Program (FAP) application?

### **FINDINGS OF FACT**

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

1. The Petitioner applied for Food Assistance (FAP) on [REDACTED], 2020.
2. The Department conducted telephone Interviews on or about March 27, 2020 and on March 30, 2020 with Petitioner to discuss the application and review eligibility factors for FAP, including asset eligibility.

3. On March 27, 2020, the Department sent the Petitioner a Verification Checklist (VCL) requesting the following information regarding other Self Employment: recent business receipts to date, recent accounting or other business records to date or recent income tax return. The VCL was due April 6, 2020. Exhibit A, pp. 11-12.
4. On March 30, 2020, the Department sent the Petitioner a Verification Checklist (VCL) and requested verification of medical expenses, Non-Heat electric Expense, Heat expense, Other Self Employment, and verification of current property taxes. The VCL was due on April 9, 2020. Exhibit A, pp. 8-9.
5. The Department issued a Notice of Case Action on April 10, 2020 effective March 19, 2020 denying the Petitioner's application for the reason that Petitioner failed to verify or allow the Department to verify information necessary to determine eligibility for this program [FAP]. Exhibit A, p. 4.
6. The Petitioner requested a timely hearing on April 30, 2020 protesting the denial of his application for FAP benefits. Exhibit A, p. 14.

### **CONCLUSIONS OF LAW**

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

In this case, the Department denied the Petitioner's application due to his failure to provide verification of requested information necessary to process the application and make an eligibility determination. The Petitioner applied for FAP on March 19, 2020. Two VCLs were sent to Petitioner as part of the application process requesting information necessary for the Department to make an eligibility determination. In addition, telephone interviews were conducted with the Petitioner on or about March 27, 2020 and March 30, 2020. During the interview call with the assigned caseworker Ms. Caldwell, she testified that Petitioner reported owning a second home with a second party who was a non-applicant. Ms. Caldwell testified that she asked the Petitioner for the address of the home, name of the joint owner and other information so she could review the information regarding the property to determine if it was a countable asset. Ms. Caldwell further testified that the Petitioner refused to provide her the information she requested and was then advised by Petitioner that he never said he owned a

second home and that the mention of a second home was merely hypothetical. With respect to any application for benefits, the Department representative must determine eligibility and level of benefits. BAM 105 (October 2019), p. 2

Clients or applicants for benefits must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of necessary forms; Clients must completely and truthfully answer all questions on forms and in interviews. The client might be unable to answer a question about himself or another person whose circumstances must be known. Allow the client at least 10 days (or other timeframe specified in policy) to obtain the needed information. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. With respect to verification of information clients must take actions within their ability to obtain verifications. Staff must assist when necessary. The Department is required to thoroughly review all eligibility factors in the case. BAM105.

Department policy states that the purpose of the interview is to explain program requirements to the applicant and to gather information for determining the group's eligibility. BAM 115 (October 2019) pp. 17. The interview is an official and confidential discussion.

Its scope must be limited to both of the following:

Collecting information and examining the circumstances directly related to determining the group's eligibility and benefits.

Offering information on programs and services available through MDHHS or other agencies.

Do the following during the interview:

- State the client's rights and responsibilities; see BAM 105.
- Review and update the application.
- Help complete application items **not** completed when it was filed.
- Resolve any unclear or inconsistent information... BAM 115, p. 18.

For FAP applications the Department must conduct a telephone interview before approving benefits. If the group [or applicant] is ineligible or refuses to cooperate in the application process, certify the denial within the standard of promptness. BAM 115, p. 25.

In addition, the Department is required to seek needed verification **not** brought to the interview. BAM 115 (October 2019 pp. 17-18. In this case, although additional verifications were requested, Ms. Caldwell testified that she denied the Petitioner's application based upon the Petitioner's refusal to provide her information regarding the second home during his interview, and that the denial decision was not based upon whether he responded to the two VCL's sent to him requesting additional information be

provided. The VCL's were sent to obtain information she sought so that she could determine Petitioner's eligibility. See Finding of Fact paragraphs 3 and 4.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. The Department must obtain verification when required by Department policy and when information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from a client or a third party. BAM 130 (April 2017) p. 1. The Department must send a negative action when the client indicates a refusal to provide a verification or the time period given has elapsed and the client has **not** made a reasonable effort to provide it. For FAP cases, extensions cannot be granted for verification due dates. BAM 130, p.7.

The Department must also consider assets in determining eligibility for FAP. Real property is considered an asset and is defined as land and objects affixed to land such as buildings, trees, fences. BEM 400 (April 2020) p. 1-2.

An individual's countable asset cannot exceed the applicable asset limit for the program being review. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. The total countable asset Limit for FAP is \$15,000 or less. BEM 400 p. 7.

Based upon Petitioner's refusal to provide Ms. Caldwell any information regarding the second home, which would be an asset she was required to review, and after discussing the matter with her supervisor to determine if there was an alternative route to be taken before she denied the application, Ms. Caldwell made the decision to deny the Petitioner's FAP application due to his refusal to cooperate and provide information regarding the second home. At the hearing, Ms. Caldwell testified on cross examination that her supervisor's approval was not required, but she did consult her supervisor after Petitioner refused to give any information to her about the second home and whether he owned the home asking her supervisor if he agreed that the refusal constituted a refusal to cooperate. Ms. Caldwell testified that she is required to verify assets, income, expenses, household size and demographic information with all applicants for FAP.

During cross examination, Ms. Caldwell was asked whether she should have sought or sent a verification regarding the second home. She responded that she did not send a verification because Petitioner would not provide her information during the interview and refused to provide an address. Once Petitioner refused to cooperate, at that point she was not required to send a verification. In addition, Ms. Caldwell denied that she was told by Petitioner that the home did not exist during the interview. Ms. Caldwell's testimony was consistent, clear and credible regarding the discussion she had with Petitioner.

The Petitioner attempted to excuse his lack of disclosure during the interview based upon the fact that the property was in foreclosure and that information regarding property taxes requested by the VCL could not be provided until the foreclosure information was received. However, as pointed out by Ms. Caldwell, Petitioner's

reference to the foreclosure information was received after his application was denied and thus was not considered. In addition, the Petitioner asserted during cross examination that Ms. Caldwell was not entitled to know everything and anything about an applicant's personal life to which Ms. Caldwell responded that Department policy requires the Department to obtain information about a person's assets so eligibility can be determined and the rules made by the federal government and department policy dictate what is relevant. She also testified that Petitioner told her that he did not want to disclose information about the other person.

Although the Petitioner responded in handwritten form on the March 30, 2020 VCL with notes on the form and dated them April 7, 2020, (the document is date stamped received April 30, 2020), these responses were made after the application had been denied due to Petitioner's non-cooperation, not due to any cooperation he may have provided after the denial with respect to other requests for information in the VCL. Once the application was denied, the responses, were properly not considered by the Department as the application had been denied for other reasons. A review of Petitioner's handwritten responses on the document do not cure the reason for the application denial as they do not address ownership in a second home disclosed during the interview. Exhibit A, pp 17-18.

When the undersigned asked Petitioner to share with the tribunal what he said to Ms. Caldwell about a second house during his interview with her and asked him directly whether he had a joint interest in a second house on Stratford in Oak Park, Michigan in March of 2020, Petitioner, rather than answer the questions, responded with whether he could squeeze in a few more questions with Ms. Caldwell and then objected to the question stating that was for the Department to prove, and then further replied that the Department's inquiry was a fishing expedition about assets that do not exist. He said the answer was "No." Petitioner admitted that he provided proof in documents submitted in Petitioner's Exhibit 1 for the hearing that there was no ownership interest in the home to him and then stated "I have some interest in the home, but he would have to go to court to clear title because there are liens, judgment liens and taxes." The undersigned also asked whether Petitioner recalled discussing during the interview that he had a possible joint interest in another property, to which he responded that the way the question was phrased he would have to say "No". When queried further in an attempt to be very specific as to the discussion during the interview as to the second property and whether he did not recall or because he did not tell her he had a possible joint interest in another property, he responded, "I do recall and I didn't tell her that", I asked her a lot of questions. The inquiry by the undersigned was for the purpose to specifically hear from the Petitioner what he recalled about the discussion with Ms. Caldwell about a second property and what occurred. No specific answer was made by the Petitioner about what was disclosed/discussed by him during the interview and he stated that he could prove he had no interest in the property if he was allowed to introduce documents he faxed, but were not received, to be provided at the hearing. He also alluded to the fact that even if there was an asset, the value of the asset was below the \$15,000 asset limit.

The documents Petitioner offered at the continued hearing to establish that Petitioner has no interest in the property were reviewed and were incomplete and inconclusive to establish whether the Petitioner had an interest in the property as his name appeared with regard to a land contract and other references such as a certificate of tax redemption made by Petitioner and were only part of a record. The documents presented do not bear the address of the property they address. The records also were not complete as to current date. The documents presented at the hearing were not provided to the Department at the time of the application and at the time of the denial. Petitioner Exhibit 1, pp. 18-19.

In conclusion, based upon the evidence presented, including both witnesses' testimony, it is determined that Petitioner's answers during the hearing and the documents he presented to establish that he had no interest in the property, do not support that he cooperated with the Department. It is determined that the Department properly concluded, based upon the information it had at the time of its determination, that the Petitioner failed to cooperate with the Department to provide information. It is determined that the Petitioner did fail to provide information during the interview so that the Department could investigate, thus Petitioner did not cooperate with the Department and the FAP application was properly denied.

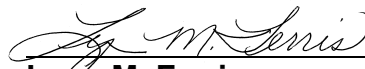
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it denied the Petitioner's FAP application for refusal to cooperate.

**DECISION AND ORDER**

Accordingly, the Department's decision is

**AFFIRMED.**

LF/tm



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**Lynn M. Ferris**  
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-Oakland-2-Hearings  
M. Holden  
D. Sweeney  
BSC4  
MOAHR

**Petitioner – Via First-Class Mail:**

[REDACTED]  
[REDACTED]  
[REDACTED], MI [REDACTED]