



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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[REDACTED] MI [REDACTED]

Date Mailed: October 16, 2020
MOAHR Docket No.: 20-005100
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 17, 2020. [REDACTED], the Petitioner, appeared on his own behalf. The Department of Health and Human Services (Department), was represented by Jessica Kirchmeier, Hearing Coordinator (HC).

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-86.

ISSUE

Did the Department properly deny Petitioner's application for Family Independence Program (FIP) and Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. On [REDACTED] 2020, the Department received Petitioner's application for FIP and FAP benefits. (Exhibit A, pp. 13-21)
2. On June 19, 2020, an interview with was completed with Petitioner. (Exhibit A, pp. 22-23)
3. The Department budgeted Petitioner's income as employment and not self-employment. (Exhibit A, p. 4)
4. On June 19, 2020, a Notice of Case Action was issued to Petitioner stating FIP and FAP were denied. In part, FAP was denied due to excess income. (Exhibit A, pp. 7-12)

5. On July 20, 2020, Petitioner requested a hearing contesting the Department's determination, specifically the income being considered employment and not self-employment. (Exhibit A, p. 6)

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

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.

BEM 502 addresses income from self-employment:

EMPLOYMENT OR SELF-EMPLOYMENT INCOME?

It is sometimes difficult to determine if an individual's income should be entered in the earned income or self-employment LUW. Make a determination based on available information and document your rationale. Use the following guidelines to help make that determination; consider the following to be indicators of self-employment:

- The individual sets own work hours.
- The individual provides own tools used on the job.
- The individual is responsible for the service being provided and for the methods used to provide the service.
- The individual collects payment for the services provided from the individual paying for them.

A client need not meet all of the above to be considered self-employed.

Do not consider the following in making the determination of whether a client's income is considered self-employment or employment:

- Withholding of income tax from payment made to individual.
- Whether or not the individual files income tax.
- Whether or not individual receives a federal Form 1099.

In this case, the Department considered Petitioner's income as employment income. Petitioner asserts that his income should have been considered to be self-employment income.

On the application, Petitioner reported that he was self-employed. (Exhibit A, p. 19) During the June 19, 2020, interview, the Department understood that Petitioner subcontracts with [REDACTED] is paid directly by them, and is paid by the load. (Exhibit A, p. 23)

The Department budgeted Petitioner's income as employment and not self-employment. (Exhibit A, p. 4) This resulted in a determination that Petitioner was not eligible for FAP in part, due to excess income. Exhibit A, pp. 7-12 and 31)

Following the July 29, 2020, pre-hearing conference, the Department wanted to clarify Petitioner's income. From an August 3, 2020, conversation with Petitioner, the Department understood that Petitioner does not set his own work hours, the customers pay the company he delivers for, and Petitioner wanted to drop off a contract he has with the company. (Exhibit A, p. 4) On August 4, 2020, the Department received a copy of the [REDACTED] Independent Contractor Agreement. (Exhibit A, pp. 42-86) On August 6, 2020, after reviewing the document, the Hearings Coordinator and Management agreed that Petitioner's income was budgeted correctly as employment and not self-employment. (Exhibit A, p. 4)

Petitioner testified that he is self-employed. Petitioner is a contractor with the company, does not receive any benefits, taxes are not collected, and he gets a 1099. (Petitioner Testimony) However, pursuant to the above cited BEM 502 policy, in making the determination of whether Petitioner's income is considered employment or self-employment the Department is not to consider whether taxes are withheld from payment to Petitioner, whether Petitioner files income tax, or whether Petitioner receives a federal Form 1099.

Petitioner testified that he sets his own work hours and is paid a flat rate for service. Petitioner provides his own vehicle, tools, and fuel. (Petitioner Testimony) It is noted that the contract Petitioner provided to the Department is not completed or signed. (Exhibit A, pp. 42-86) Accordingly, it does not document relevant factors, such as

whether Petitioner is compensated based on a percentage of the gross receipts or a flat rate. Further, this contract indicates there is a fuel matrix applied to the rate invoiced by and/or payable to the Contractor. (Exhibit A, pp. 51-52)

Overall, Petitioner did not provide sufficient evidence to support a determination that his income is self-employment. Some of the indicators the BEM 502 policy states the Department is to consider support that the income is from employment. For example, Petitioner collects payment from [REDACTED] rather than the customer that placed the order from the office supply company ([REDACTED] other). Petitioner testified that he sets his own work hours. However, during the August 3, 2020, conversation with Petitioner, the Department understood that Petitioner does not set his own work hours. (Exhibit A, p. 4) Further, Petitioner did not provide sufficient evidence to support his assertions regarding how he is compensated and whether there is any compensation for fuel.

It is also noted that there were other reasons for the FIP and FAP denials as stated on the June 19, 2020, Notice of Case Action. (Exhibit A, pp. 7-12) It appears that a FIP group member was not compliant with school attendance requirements and that citizenship/immigration status verification was not provided. (Exhibit A, pp. 8-9 and 22) Petitioner did not present any arguments contesting these reasons for the June 19, 2020, FIP and FAP denials.

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 Petitioner's application for FIP and FAP benefits.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

CL/ml



Colleen Lack
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

DHHS

Jessica Kirchmeier
Eaton County DHHS – via electronic mail

BSC2 – via electronic mail

G. Vail – via electronic mail

B. Cabanaw – via electronic mail

M. Holden – via electronic mail

D. Sweeney – via electronic mail

Petitioner

██████████ – via first class mail
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