



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: May 7, 2021  
MOAHR Docket No.: 21-001538  
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 line on April 29, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Haysem Hosny, hearing facilitator. [REDACTED] of [REDACTED] participated as an English-Arabic translator.

### **ISSUES**

The first issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility.

The second is whether MDHHS properly denied Petitioner's subsequent application for 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. As of December 2020, Petitioner was an ongoing recipient of FAP benefits with a benefit period certified through December 2020.
2. As of December 2020, Petitioner reported to MDHHS ongoing self-employment income as an electrician.
3. On an unspecified date, MDHHS sent Petitioner notice of FAP closure beginning January 2021.

4. As of December 31, 2020, MDHHS had not sent Petitioner a Verification Checklist (VCL) since July 2020.
5. On [REDACTED], 2021, Petitioner applied for FAP benefits and reported ongoing self-employment income.
6. On February 11, 2021, MDHHS sent a VCL requesting Petitioner's most recent tax return, to include all schedules. Petitioner was given a due date of February 21, 2021.
7. On an unspecified date, Petitioner returned 2019 tax documents to MDHHS which did not include Schedule C.
8. On February 23, 2021, MDHHS sent Petitioner notice of application denial due to Petitioner failing to timely return a Schedule C.
9. On [REDACTED] 2021, Petitioner requested a hearing to dispute the denial 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 requested a hearing, in part, to dispute a termination of FAP benefits. Exhibit A, pp. 3-4. MDHHS did not address Petitioner's dispute concerning closure of FAP benefits in its hearing packet.<sup>1</sup> MDHHS credibly testified that Petitioner's FAP eligibility ended after December 2020 as part of a redetermination of FAP benefits. During the hearing, MDHHS was asked to check the Notice of Case Action for the official reason for closure. MDHHS responded that it was unable to fully access the document. Thus, no reliable evidence was given as to the official reason for closure.

It was not disputed that Petitioner's subsequently submitted FAP application was denied due to Petitioner's failure to verify self-employment income. MDHHS alleged that Petitioner specifically failed to return Schedule C with his tax documents. MDHHS's testimony assumed that the same reason caused Petitioner's FAP eligibility to end after December 2020.

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<sup>1</sup> Petitioner's hearing request stated that MDHHS "closed my case during [claiming that I had not] returned the redetermination form which I already did via fax and email". Exhibit A, p. 4. Though Petitioner's primary dispute was a denied application, the statement concerning a wrongful closure of his case justifies accepting subject matter jurisdiction for FAP closure.

For FAP benefits, the redetermination process begins when the client files redetermination documents. BAM 210 (January 2018), p. 3. The DHS-3503, Verification Checklist, should be sent after the redetermination interview for any missing verifications allowing 10 days for their return. *Id.*, p. 17. Verifications must be provided by the end of the current benefit period or within 10 days after they are requested, whichever allows more time. *Id.* Benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. *Id.*, p. 3.

It was not disputed that Petitioner's FAP eligibility was up for redetermination after December 2020. If Petitioner was required to return tax documents to MDHHS, it must have been requested via VCL. MDHHS testimony acknowledged that it did not send Petitioner a VCL in or near December 2020: the month of redetermination.<sup>2</sup> Assuming Petitioner was obligated to return a Schedule C to MDHHS as part of his redetermination, MDHHS did not properly request the document. Thus, even accepting MDHHS's uncorroborated explanation to justify FAP closure, Petitioner's FAP eligibility was improperly closed due to MDHHS's failure to request a Schedule C via VCL before case closure.<sup>3</sup>

Petitioner also requested a hearing to dispute the denial of an application requesting FAP benefits. Exhibit A, pp. 3-4. MDHHS credibly testified that Petitioner's application was registered as received on [REDACTED] 2021, after Petitioner electronically submitted his application after business hours on [REDACTED] 2021.<sup>4</sup> A Notice of Case Action dated February 23, 2021, stated that Petitioner's application was denied due to a failure to verify self-employment income.<sup>5</sup> Exhibit A, pp. 11-15.

For FAP benefits, MDHHS is to verify income at application. BEM 505 (October 2017) p. 14. For all programs, MDHHS is to tell the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. MDHHS is to send a VCL to request verification. *Id.* 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 sent Petitioner a VCL on February 11, 2021, giving Petitioner until February 22, 2021, to verify self-employment income. Exhibit A, pp. 7-9. The VCL listed tax forms as

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<sup>2</sup> MDHHS testimony tried to justify FAP closure from a VCL sent to Petitioner in July 2020. A VCL sent to Petitioner in July 2020 would not substitute for a VCL that MDHHS should have sent Petitioner during the month of redetermination.

<sup>3</sup> Petitioner testified that he thought that he sent MDHHS a Schedule C. His testimony was uncorroborated and not consistent with the documents sent to MDHHS in a subsequent attempt to verify his income.

<sup>4</sup> MDHHS is to register applications received after the close of business for the following business date. BAM 110 (January 2020) p. 6.

<sup>5</sup> MDHHS also sent Petitioner a Quick Note on March 8, 2021, stating that Petitioner specifically failed to return Schedule C with his tax return. Exhibit A, p. 31.

an acceptable verification. *Id.* MDHHS also added the comment that a returned tax return should include “ALL PAGES AND SCHEDULES”. It was not disputed that Petitioner returned 2019 tax documents which included Form 1040, Schedule EIC (Earned Income Credit form), Schedule 8812 (Additional Child Tax Credit), Form 8995 (Qualified Business Income Deduction Simplified Computation), Form 8867 (Paid Preparer’s Due Diligence Checklist), and additional State of Michigan tax forms. Exhibit A, pp. 16-30. Notably, Schedule C was not among Petitioner’s submitted documents. MDHHS contended that Petitioner’s failure to return Schedule C with his tax forms justified denial of the application.

Consideration was given to finding that policy does not require clients to submit a Schedule C with their tax returns. For FAP benefits, tax returns are listed as an acceptable verification of self-employed income, but policy does not specify whether a Schedule C is required. BEM 502 (October 2019) p. 7. The Internal Revenue Service (IRS) requires a Schedule C from sole proprietors.<sup>6</sup> Petitioner’s testimony implied he is a sole proprietor with no employees but himself. Given Petitioner’s circumstances, a Schedule C is a required tax form for the IRS. As a required tax form for the IRS, it is reasonable to extend the requirement to MDHHS.

Petitioner testified that he returned all of his tax forms that were given to him by his tax preparer. Assuming Petitioner’s testimony to be true, it still would not excuse a failure to return a required and properly requested tax form. Given the evidence, Petitioner failed to return a Schedule C as part of his self-employment verifications. Thus, MDHHS properly denied Petitioner’s application for FAP benefits.

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<sup>6</sup> <https://www.irs.gov/businesses/small-businesses-self-employed/self-employed-individuals-tax-center#SelfEmployed>

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's application for FAP benefits dated [REDACTED] 2021. Concerning denial of Petitioner's application for FAP benefits, the MDHHS actions are **AFFIRMED**.

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

- (1) Reprocess Petitioner's FAP eligibility beginning January 2021 subject to the findings that MDHHS failed to establish that Petitioner's self-employment income was properly requested during the month of redetermination and that proper notice of termination was sent; and
- (2) Issue notice and a supplement of benefits, if any, due to Petitioner.

The actions taken by MDHHS are **REVERSED**.

CG/tm



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**Christian Gardocki**

Administrative Law Judge

