



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: May 19, 2021
MOAHR Docket No.: 21-001783
Agency No.: ██████████
Petitioner: ██████████

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 May 12, 2021. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Michelle Collins, hearings coordinator. ██████████, Petitioner's daughter, participated as an English-Arabic translator.

ISSUES

The first issue is whether MDHHS properly denied Petitioner's application for FAP benefits.

The second issue is whether MDHHS properly terminated 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 January 2021, Petitioner was an ongoing FAP recipient with no upcoming redetermination date or recently reported changes.
2. On ██████████, 2021, Petitioner submitted an application to MDHHS reporting a household which included his spouse, ██████████ hereinafter, "Spouse"), and five children, but not his son, ██████████ (hereinafter, "Son").

3. On an unspecified date in January 2021, MDHHS mailed Petitioner a Verification Checklist (VCL) requesting proof of Petitioner's employment income from [REDACTED] (hereinafter, "Employer").
4. On an unspecified date before the VCL, Petitioner emailed pay documents from Employer to MDHHS.
5. On February 9, 2021, MDHHS terminated Petitioner's FAP eligibility beginning February 2021 due to unspecified reasons.
6. On February 21, 2021, Petitioner again submitted pay documents form Employer to MDHHS.
7. On [REDACTED] 2021, Petitioner submitted to MDHHS an application requesting FAP benefits which again reported that Son was not a member of Petitioner's household.
8. As of March 2021, Petitioner reported and verified an unspecified property insurance obligation.
9. On March 26, 2021, MDHHS denied Petitioner's application for FAP benefits due to excess gross income based on a benefit group that included Son and excluded Spouse, Additionally, MDHHS factored Son's employment income and no property insurance obligation.
10. On [REDACTED], 2021, Petitioner signed a hearing request and submitted it to MDHHS.

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 submitted a signed and dated hearing request to MDHHS on [REDACTED], 2021. Exhibit A, pp. 3-4. Though the hearing request provided no specifics of a dispute, MDHHS properly inferred a dispute over a recently denied application for FAP benefits. MDHHS credibly testified that Petitioner applied for FAP benefits on [REDACTED] 2021. A Notice of Case Action dated March 26, 2021, stated that Petitioner's application was denied due to excess net income. Exhibit A, pp. 5-9.

BEM 556 outlines the factors and calculations required to determine a client's net income for FAP benefits. Net income factors group size, countable monthly income, and

relevant monthly expenses. During the hearing, MDHHS provided budget pages for March 2021 listing all relevant budget factors. Exhibit A, pp. 10-12. During the hearing, all budget factors were discussed with Petitioner. Petitioner disputed the group factored by MDHHS, income, and housing expenses.

In determining Petitioner's FAP eligibility, MDHHS factored a group size of seven. The FAP benefit group factored by MDHHS excluded Spouse and included Son; Petitioner disputed both actions.

The denial notice stated that MDHHS excluded Spouse based on an alleged failure to meet citizenship/immigration requirements. Exhibit A, p. 6. MDHHS presented no evidence to justify the exclusion of Spouse from the group. Further, MDHHS testimony acknowledged that Spouse was wrongfully excluded from the group as it possessed verification of Spouse's legal residency in the United States for a period of more than five years.¹

Concerning Son, MDHHS included him in the group on the basis that he resided with Petitioner. The only presented evidence of Son's address was theworknumber.com employment records dated April 1, 2021, which listed a residential address for Son. Exhibit A, pp. 15-16. Son's address was identical to Respondent's in all but the last digit of the street number. Petitioner's testimony explained that he owns a two-family flat and that he resides with Spouse and five children in one flat, and Son resides in the other. MDHHS presented no evidence to the contrary. Given the evidence, Petitioner and Son are not residents of the same household. Thus, MDHHS improperly included Son as a group member.

MDHHS calculated an employment income for \$7,723 for Petitioner's FAP benefit group. MDHHS testified that Petitioner's and Son's employment income were included. As MDHHS improperly included Son as a group member, it can be found that MDHHS also improperly included Son's income.

MDHHS credited Petitioner with monthly housing expenses of \$89.23. MDHHS testified that the expenses came solely from Petitioner's property tax obligation. MDHHS testimony admitted that Petitioner also reported and verified an obligation for an unspecified amount of property insurance. Property insurance expenses are countable. BEM 554 (January 2021) p. 15. The evidence established that MDHHS also incorrectly factored Petitioner's housing expenses.

The evidence established that MDHHS improperly excluded Spouse, included Son, factored Son's employment income, and excluded property insurance. As a remedy, Petitioner is entitled to a reprocessing of his application with all of the above to be corrected.

¹ Generally, legal U.S. residency with a date of entry older than five years are eligible to receive FAP benefits. BEM 235.

Petitioner also testified that he wanted to dispute a closure of FAP benefits. MDHHS only addressed a dispute over the recently denied application in its hearing packet thereby implying a lack of notice over Petitioner's stated dispute. An analysis must be made as to whether Petitioner requested a hearing to dispute a termination of FAP benefits.

Petitioner requested his hearing on a generic Request for a Hearing form. Exhibit A, pp. 3-4. Thus, it could not be tied to any specific case action taken by MDHHS.² His form complied with bare minimum hearing request requirements by being signed and dated, while providing no information indicating which MDHHS actions were being disputed. Generally, clients have a due process obligation to inform MDHHS of the actions being disputed when requesting a hearing. The present case justifies an exception.

Petitioner credibly testified that he went to his local MDHHS office to request a hearing and was given the form subsequently submitted to MDHHS to request a hearing. The form did not include any identifiable space to explain which actions were being disputed. By not providing Petitioner a hearing request form allowing for a description of the dispute, MDHHS cannot fault Petitioner for not describing his dispute. Under the circumstances, Petitioner is entitled to a hearing to dispute a termination of FAP benefits.

It was not disputed that MDHHS terminated Petitioner's FAP eligibility beginning February 2021. MDHHS testified that a Notice of Case Action dated February 9, 2021, stated that Petitioner's case closed due to unstated reasons.³

MDHHS must inform the client of the reason for closure in a written notice. BAM 220 (April 2019) p. 2. Notices must include the action taken by MDHHS, the reason for the action, the specific manual item which cites the legal basis for action, an explanation of the right to request a hearing, and the conditions under which benefits may be continued if a hearing is request. *Id.*, pp. 2-3.

MDHHS's failure to send written notice informing Petitioner of the reason for closure justifies finding that the closure was improper. Accordingly, Petitioner is entitled to a reinstatement of FAP eligibility beginning February 2021.

Despite improper notice of closure, hearing time delved into why Petitioner's case was closed. MDHHS testified that Petitioner's case closed due to an alleged failure to verify income.

² MDHHS sends Notices of Case Action for any negative actions taken against a case (see BAM 220). Each notice includes a corresponding hearing request. Such hearing requests identify a dispute because they can be matched to the corresponding Notice of Case Action. Such a match cannot happen with a generic Request for Hearing document.

³ It is curious that MDHHS terminated Petitioner's FAP benefits beginning the month of notice. Generally, clients are entitled to receive advance notice of a benefit termination (see BAM 220). MDHHS provided no justification for the lack of advance notice of benefit termination.

MDHHS gave testimony that Petitioner was mailed a Verification Checklist in January 2021 and that he allegedly failed to timely verify employment income.⁴ Accepting that Petitioner did not timely verify income, MDHHS would still need a valid reason to request verification. Countable income is to be verified at application, redetermination, a reported change, and/or the addition of income from a new benefit group member. BEM 500 (July 2020) pp. 13-14. As of January 2021, Petitioner was an ongoing FAP benefit recipient.⁵ MDHHS testimony gave no indication that Petitioner reported a change in income, group members, or that his eligibility was scheduled for redetermination. Thus, the evidence did not establish a basis for requesting income verification from Petitioner. Without a basis for requesting income, a negative case action based on a failure to verify income cannot follow. As a remedy, Petitioner is again entitled to a reinstatement of benefits.

⁴ Petitioner testified that he timely returned income verifications via email before his case was closed. It was also not disputed that Petitioner returned verification to MDHHS on February 21, 2021. Given the numerous established errors by MDHHS, Petitioner's testimony was credible. For purposes of this decision, it is also irrelevant as MDHHS provided insufficient evidence to justify the request for verification.

⁵ Petitioner submitted an application to MDHHS on [REDACTED], 2021. However, as an ongoing benefit recipient, there was no need for Petitioner to submit an application. Thus, a contention by MDHHS that a verification request was justified because of Petitioner's application would be rejected.

DECISION AND ORDER

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

- (1) Reinstate Petitioner's FAP eligibility beginning February 2021 based on the following findings:
 - a. MDHHS failed to establish a properly sent written notice; and
 - b. MDHHS failed to establish a proper basis for requesting employment income verifications; and
- (2) If necessary, reprocess Petitioner's application for FAP benefits dated [REDACTED], 2021, subject to the findings that MDHHS improperly excluded Spouse, included Son, included Son's earnings, and excluded property insurance expenses; and
- (3) Issue a supplement of benefits and notice in accordance with policy.

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

CG/tm



Christian Gardocki

Administrative Law Judge

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-55-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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