



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: May 21, 2021
MOAHR Docket No.: 21-001964
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 May 17, 2021, from Detroit, Michigan. Petitioner was present and was unrepresented. The Department of Health and Human Services (Department) was represented by Lance Fletcher, Eligibility Specialist and Mary Strand, Family Independence Manager.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefit case?

FINDINGS OF FACT

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

1. Petitioner was an ongoing FAP recipient.
2. On February 6, 2021, Petitioner completed a redetermination related to his FAP benefit case.
3. On February 8, 2021, the Department sent Petitioner a Verification Checklist (VCL) requesting verification of Petitioner's other/self-employment income (Exhibit A, pp. 48-49).
4. On February 11, 2021, Petitioner completed an interview related to his redetermination (Exhibit A, pp. 44-47).

5. On February 22, 2021, the Department sent Petitioner a Notice of Case Action informing him that his FAP benefit case was closing effective March 1, 2021, ongoing (Exhibit A, pp. 31-35).
6. On April 12, 2021, Petitioner submitted a request for hearing disputing the Department's actions.

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, Petitioner was an ongoing FAP recipient. On February 6, 2021, Petitioner completed a redetermination related to his FAP benefit case. The Department testified that Petitioner indicated on the redetermination that he had self-employment income. As a result, the Department sent Petitioner a VCL requesting verification of his self-employment income. Proofs were due by February 18, 2021.

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (January 2021), p. 1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. For FAP cases, the Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is required. BAM 130, p. 7. Verifications are considered to be timely if received by the date they are due. BAM 130, p. 7. For electronically transmitted verifications (fax, email or Mi Bridges document upload), the date of the transmission is the receipt date. BAM 130, p. 7. Verifications that are submitted after the close of regular business hours through the drop box or by delivery of a Department representative are considered to be received the next business day. BAM 130, p. 7. The Department sends a negative action notice 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. BAM 130, p. 7.

At the hearing, there was a dispute between the parties that Petitioner had self-employment income at the time of the February 6, 2021 redetermination. The Department testified that Petitioner indicated on the February 6, 2021 redetermination

that he had self-employment income, prompting the issuance of the February 8, 2021 VCL. Petitioner testified that he has not had self-employment income since 2019 and notified the Department of such on multiple occasions.

The Department failed to present the completed redetermination where Petitioner indicated that he had self-employment income. The Department presented the Interview Guide from the February 11, 2021 interview. It states that the client reported he did not have any other income other than Unemployment Compensation Benefit (UCB) income that ended in December 2019. However, it also states, "HOH had self employment and did not respond with an explanation when asked about when or if it was ended. Mr. OConnor was asked about the Versatube 1099, prior to the interview, he said he had business with them and was self-employed. He was told a more recent document was needed because we would use 2020 information. We discussed self-employment, HOH failed to provide details and was advised to submit his tax returns and that verification checklist was being sent." At the hearing, it was unclear as to what details Petitioner provided at the interview that led the Department to believe he had self-employment income. The Department conceded that Petitioner submitted a 1099 from 2019 but determined the information was insufficient, as it was outdated. The Department stated that Petitioner's answers at the interview were confusing and it was difficult to relay the details of the conversation. As a result of the lack of clarity provided by Petitioner, the Department requested further verification of his self-employment income.

The Department also presented case comments from Petitioner's electronic casefile. The case comments indicate that the Department spoke with Petitioner again on March 16, 2021, regarding his self-employment income. Petitioner reiterated that he has not had self-employment income since 2019. The notes indicate that information conflicted with details he provided on an April 29, 2020 application, and during the subsequent interview. The notes again indicated Petitioner provided confusing information regarding his self-employment income.

The Department failed to present sufficient evidence that Petitioner had current self-employment income at the time of the February 2021 redetermination that required verification. Per the Department's own evidence, Petitioner indicated on several occasions that he has not had self-employment income since 2019. The Department did not present the completed February 6, 2021 redetermination where Petitioner purportedly indicated he had current self-employment income. The Department also failed to provide any information related to the April 29, 2020 application that would support the Department's belief that Petitioner had more recent self-employment income.

The Department also presented a Front End Eligibility (FEE) investigation conducted by the Office of Inspector General (OIG) office (Exhibit A, pp. 19-23). The report does not indicate the Department was able to find conclusive evidence that Petitioner had self-employment income in 2021, other than the statements made by Department personnel that Petitioner reported the income on the February 6, 2021 redetermination and the April 29, 2020 application. The report primarily focuses on unreported assets.

Additionally, the Department testified that Petitioner did submit a 1099 from 2019. Petitioner also provided self-employment expense statements and bank statements. The Department testified it determined the documents were insufficient to verify Petitioner's self-employment income. The Department did not provide the documents for the undersigned ALJ to make an independent determination as to whether they satisfied the verification requirements per policy.

In the absence of the evidence stated above, the Department failed to establish that it acted in accordance with policy when it closed Petitioner's FAP benefit case due to the self-employment verification issue. It should also be noted that the Department testified that Petitioner was otherwise ineligible due to excess assets that were discovered after the closure of his FAP benefit case. As the Department has not issued a formal decision on the asset issue, the matter was not addressed at the hearing.

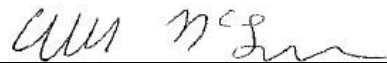
DECISION AND ORDER

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FAP benefit case. Accordingly, the Department's decision is **REVERSED**.

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

1. Redetermine Petitioner's FAP eligibility as of March 1, 2021, ongoing;
2. If Petitioner is eligible for FAP benefits, issue supplements he is entitled to receive; and
3. Notify Petitioner of its decision in writing.

EM/jem



Ellen McLemore
Administrative Law Judge
for Elizabeth Hertel, 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-District-IV-Hearings
BSC4-HearingDecisions
M. Holden
D. Sweeney
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED], MI