



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: May 28, 2021
MOAHR Docket No.: 21-002034
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 26, 2021. The Petitioner was self-represented. The Department of Health and Human Services (Department) failed to appear at the hearing. The hearing was scheduled for 2:50 PM and concluded at 3:08 PM.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case for failure to verify requested information?

Did the Department properly deny Petitioner's FAP Application based upon excess income?

FINDINGS OF FACT

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

1. Prior to March 2021, Petitioner submitted all paystubs for a three-month period to the Department at the time of her Redetermination except one because she had been off work and on medical leave for that period.
2. Effective March 2021, Petitioner's FAP case was closed for failure to verify her income.
3. In [REDACTED] 2021, Petitioner reapplied for FAP benefits.
4. Petitioner's application was denied based upon excess income.

5. On April 16, 2021, Petitioner submitted a request for hearing disputing the Department's consideration of her income in the determination of her Medical Assistance (MA) Program, State Emergency Relief (SER), and FAP eligibility.
6. At the hearing, Petitioner requested to withdraw her hearing request as it related to MA and SER benefits as her concerns had been resolved.

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 closed Petitioner's FAP benefits for failure to verify her income and then later denied her FAP Application for excess income.

Clients have the right to contest a Department decision affecting eligibility or benefit levels, including termination of program benefits, when the client believes the decision is incorrect. BAM 600 (March 2021), pp. 2, 5. When a hearing request is filed, the matter is transferred to the Michigan Office of Administrative Hearings and Rules (MOAHR) for a hearing before an Administrative Law Judge. BAM 600, p. 1. In preparation for the hearing, the Department is required to send to MOAHR and the client a hearing summary. BAM 600, pp. 9-10, 24. The hearing summary is required to include a clear, concise statement of the case action taken, a chronological summary of events, and citations to relevant law and policy, amongst other things. BAM 600, p. 10. Additionally, a hearing packet must be prepared to send along with the hearing summary. BAM 600, p. 10. The completed hearing packet must include, at a minimum, the relevant Notice of Case Action and a copy of all documents the Department intends to offer to support its action. BAM 600, p. 10.

At the hearing, the Department representative and client are tasked with presenting their respective cases with reference to the documents provided in the hearing packet or otherwise properly served under the Michigan Administrative Rules. BAM 600, p. 37. After hearing the evidence, the Administrative Law Judge has the duty to review the evidence presented and based on that evidence, determine whether the Department met its burden of proving that the challenged actions were taken in compliance with law and Department policy. BAM 600, p. 39.

In this case, the Department failed to appear for the hearing or present any evidence. The Department bears the burden of showing that its challenged actions were taken in compliance with law and policy. To do so, the Department must at least explain why it took the action and provide documentary evidence of the action taken. The Department failed to do either. Thus, the Department failed to meet its burden of proof and must be reversed.

Despite the Department's failure to present evidence, Petitioner credibly testified that the Department had closed her FAP case effective March 2020 for failure to verify one pay period of income although she provided three months of income prior to the missing period. The Department is required to consider income from the past 30 days if it appears to accurately reflect the income to be received in the benefit month. BEM 505 (January 2021), p. 6. If the income is fluctuating or irregular, the Department is required to consider the past 60 to 90 days. *Id.* However, policy also provides that if neither the client nor the local office can obtain verification of information despite a reasonable effort, the Department should use the best available information or best judgment. BAM 130 (January 2021), p. 3. Petitioner could not obtain the missing information for one pay period because she was on medical leave and did not have a pay stub to obtain. Therefore, she provided the next best thing, wage verification for the past 90 days and advised her caseworker of the situation. Despite policy and Petitioner's efforts, the Department closed Petitioner's case. The Department did not act in accordance with policy in closing Petitioner's FAP case for failure to verify one pay period.

Next, Petitioner reapplied for FAP benefits and was denied because the Department believed she had excess income. Once again, the Department did not appear at the hearing or present any evidence to support its determination of excess income. While Petitioner provided some information about her financial circumstances, she was unable to provide the exact dollar amount of the wages considered and therefore, it is impossible to determine if the Department properly denied her application. Therefore, the Department has not met its burden of proof in establishing that Petitioner's 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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FAP case and denied her FAP application.

DECISION AND ORDER

Petitioner's hearing request is **DISMISSED** as it relates to the **MA** and **SER** programs.

The Department's decision is **REVERSED** as it relates to the closure of Petitioner's **FAP** benefits and the denial of her **FAP** Application.

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 effective March 1, 2021;
2. If otherwise eligible issue FAP benefits to Petitioner for benefits not previously received effective March 1, 2021;
3. If Petitioner is not eligible as of March 1, 2021, reprocess Petitioner's Application for FAP benefits;
4. If otherwise eligible, issue supplements to Petitioner for FAP benefits not previously received effective as of her Application date; and,
5. Notify Petitioner in writing of its decision.



AMTM/cc

Amanda M. T. Marler
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-Wayne-57-Hearings
BSC4-HearingDecisions
D. Sweeney
M. Holden
MOAHR

Petitioner- Via USPS:

