



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], MI [REDACTED]

Date Mailed: April 7, 2023
MOAHR Docket No.: 23-001122
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 on March 29, 2023 via teleconference. Petitioner appeared and represented herself. Valarie Foley, Hearings Facilitator, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly process Petitioner's Food Assistance Program (FAP) 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 recipient of FAP benefits.
2. On October 12, 2022, the undersigned Administrative Law Judge (ALJ) issued a hearing decision in MOAHR Docket Number 22-003449 (*hereinafter*, "October Hearing Decision"), which found that MDHHS failed to properly determine Petitioner's FAP benefit rate (Exhibit 1, p. 9). The October Hearing Decision ordered MDHHS to recalculate Petitioner's FAP budget from August 1, 2022 ongoing, budgeting Petitioner's verified self-employment expenses, contacting Petitioner for explanation of expenses if necessary, and only requesting documents that it has confirmed that it needs and does not have in Petitioner's file.

3. On December 8, 2022, ALJ Amanda M. T. Marler issued a Hearing Decision (*hereinafter*, “December Hearing Decision”) in MOAHR Docket Number 22-004918, which found that MDHHS failed to properly process the decision in MOAHR Docket Number 22-003449 (Exhibit 1, p. 5). Particularly, ALJ Marler found that MDHHS failed to redetermine Petitioner’s self-employment income as ordered by the October Hearing Decision (Exhibit 1, p. 8).
4. In December 2022, Petitioner completed a six-month review for FAP. As part of Petitioner’s six-month review, MDHHS requested proof of her income for the last 30 days (Exhibit 1, p. 15). There was a delay in processing Petitioner’s six-month review. Petitioner received FAP benefits in December 2022 and January 2023, but did not receive her February benefits until March 2023.
5. On February 21, 2023, Petitioner filed a Request for Hearing to dispute the termination of her FAP benefits and the calculation of her self-employment income (Exhibit A, p. 3).
6. On March 7, 2023, MDHHS sent Petitioner a Verification Checklist (VCL) requesting Petitioner’s self-employment income for the months of December 2022, January 2023 and February 2023 (Exhibit A, p. 15).
7. On March 7, 2023, MDHHS sent Petitioner a Self-Employment Income and Expense Statement, which required Petitioner to provide the requested information regarding her household’s self-employment income for the months of December 2022 through February 2023 (Exhibit A, p. 20).
8. On March 7, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that she was approved for FAP benefits at a rate of \$191.00 per month, effective February 1, 2023 through July 31, 2023 (Exhibit 1, p. 12). Petitioner’s FAP benefit rate was based in part on \$426.00 in self-employment income (Exhibit 1, p. 13). The Notice also indicated that Petitioner was a simplified reporter (Exhibit A, p. 13).

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. MDHHS 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, MDHHS processed Petitioner's December six-month review in an untimely manner, which caused a delay in Petitioner receiving her FAP benefits. Additionally, Petitioner disputed MDHHS' calculation of her self-employment income. This decision is limited to those disputes.

MDHHS must periodically redetermine or renew an individual's eligibility for active programs. BAM 210 (October 2022), p. 1. For FAP groups with a 12-month benefit period, a semi-annual contact report must be recorded, data collection updated, and eligibility results certified by the last day of the sixth month of the benefit period to affect benefits no later than the seventh month. *Id.*, p. 12. The semi-annual contact is satisfied by the completion of a form (MDHHS-1046) and the receipt of all required verifications. *Id.*, p. 12. If the clients' gross earned income has changed by more than \$125.00, they must return verification of their past 30 days of earnings with a completed MDHHS-1046. *Id.* If clients indicate that their income has not changed by more than \$125.00, then verification is not required. *Id.*

MDHHS is required to obtain verification when it is required by policy or information is unclear or incomplete. BAM 130 (January 2022), p. 1. Verification is usually required at application/redetermination and when a reported change affects eligibility or benefit level. *Id.* To obtain verification, MDHHS must tell the client what verification is required, how to obtain it and the due date. *Id.*, p. 3. The client must obtain the requested verification, but the local office must assist the client if they need and request help. *Id.*, p. 3. If neither the client nor the local office can obtain verification despite a reasonable effort, MDHHS must use the best available information. *Id.* If no evidence is available, MDHHS must use its best judgement. *Id.* MDHHS allows the client ten calendar days to provide the requested verification. *Id.*, p. 7. Verifications are considered timely if received by the date that they are due. *Id.* MDHHS sends a negative action notice when the client indicates a refusal to provide the requested verification, or the time period given on the VCL has lapsed and the client has not made a reasonable effort to provide it. *Id.*

Individuals, who run their own businesses, are self-employed. BEM 502 (October 2019), p. 1. Countable income from self-employment equals the total proceeds minus allowable expenses incurred producing the income. BEM 502 (October 2019), p. 3. Allowable expenses (except for MAGI-related Medicaid) are the higher of 25% of the total proceeds, *or actual expenses if the client chooses to claim and verify the expenses.* BEM 502, p. 3 (emphasis added). MDHHS is required to verify countable income from self-employment at application, when a member is added to the group, and at redetermination or renewal. *Id.*, p. 8. For self-employment income, MDHHS determines a monthly amount based on discussing with the client what he or she expects to receive on average per month. *Id.*, p. 7. For income that is fluctuating or irregular, MDHHS uses the past 60 or 90 days of history, if the past 30 days is not a good indicator of future income and if the fluctuations of the past 60 or 90 days accurately reflect what is expected in the benefit month. BEM 505 (October 2022), p. 6. MDHHS should seek input from the client whenever possible. *Id.*, p. 1.

In December 2022, Petitioner was subject to a six-month review for FAP and MDHHS requested verification of her income for the last 30 days (Exhibit 1, p. 15). Petitioner completed MDHHS-1046 and submitted proof of her self-employment related income and expense for the month of December (Exhibit A, pp. 6-9). After accounting for expenses, Petitioner alleged that she earned \$[REDACTED] in self-employment income for that month (Exhibit A, p. 8). MDHHS testified that Petitioner's renewal was delayed because it was waiting for verification of self-employment income. However, there is no evidence that MDHHS requested additional verification beyond what Petitioner had already provided. MDHHS is required to tell clients specifically what verifications are required and the record shows that it failed to do so here.

On March 7, 2023, MDHHS sent Petitioner a Self-Employment income and Expenses Statement which requested proof of income and expenses for December 2022 through February 2023 (Exhibit 1, p. 20). It is unclear why MDHHS was requesting additional verification of self-employment income in March, when the six-month review was in December. To complicate matters further, MDHHS sent Petitioner a VCL on March 7, 2023 requesting verification of income for December 2022, January 2023, and February 2023 (Exhibit 1, p. 24). Given that Petitioner's six-month review was in December 2022, this additional documentation was unnecessary. MDHHS requested 30 days of income in December 2022, in line with Petitioner's renewal and Petitioner complied with MDHHS' request. MDHHS did not present evidence to show that 30 days was insufficient to prospect Petitioner's income. MDHHS did not allege that Petitioner's proof was insufficient and it did not request additional information until months later.

Initially, MDHHS determined that Petitioner's net self-employment income was \$[REDACTED] for February 1, 2023 through July 31, 2023 (Exhibit 1, pp. 12-13). However, at the hearing, it introduced evidence to show that it recalculated Petitioner's net self-employment income as \$[REDACTED] per month, effective April 1, 2023 ongoing (Exhibit A, p. 10). MDHHS could not explain how it calculated either of these amounts. It is unclear from the record what MDHHS determined Petitioner's self-employment income was for the month of January 2023. MDHHS should have determined an averaged amount for Petitioner's self-employment income at the December renewal based on Petitioner's proof of income and expenses, and it failed to show that it properly did so here. It is important to note that Petitioner is a simplified reporter, meaning that once MDHHS properly determines an amount for her self-employment income, she is only required to report changes if her income exceeds the income limit for simplified reporting households. *See generally*, BAM 200 (October 2022). MDHHS is required to request verifications at application, redetermination/renewal, and when a change is reported. *See generally*, BAM 130. Adhering to this policy would greatly reduce the amount of paperwork requested by MDHHS, which would ease the administrative burden on both parties.

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 MDHHS did not act in accordance with Department policy when it processed Petitioner's FAP case.

DECISION AND ORDER

Accordingly, MDHHS' decision is **REVERSED**.

MDHHS 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. Reprocess Petitioner's December 2022 FAP renewal, taking into account the verification of self-employment income and expenses that Petitioner previously provided;
2. Seek additional verification from Petitioner only if required by policy or previously submitted verification is unclear or incomplete;
3. Seek input from Petitioner when prospecting ongoing self-employment income;
4. Redetermine Petitioner's FAP benefit rate from January 1, 2023 ongoing;
5. Issue supplements to Petitioner for any FAP benefits that she was eligible to receive but did not, from January 1, 2023 ongoing; and
6. Notify Petitioner of its decision in writing.

LJ/tm



Linda Jordan
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-Electronic Mail :

DHHS
Susan Noel
Wayne-Inkster-DHHS
26355 Michigan Ave
Inkster, MI 48141
**MDHHS-Wayne-19-
Hearings@michigan.gov**

Interested Parties

M. Holden
D. Sweeney
BSC4

Via-First Class Mail :

Petitioner

██████████
████████████████████
██████████ MI ██████████