



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: March 9, 2023
MOAHR Docket No.: 23-000551
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 February 27, 2023 via teleconference. Petitioner appeared and represented himself. Lekeitia Cokley, Assistance Payments Worker, and Helea Doucet, Caseworker, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUES

1. Did MDHHS properly deny Petitioner's application for Food Assistance Program (FAP) benefits?
2. Did MDHHS properly deny Petitioner's application for State Emergency Relief (SER) assistance?

FINDINGS OF FACT

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

1. On November 28, 2022, Petitioner applied for SER and FAP benefits (Exhibit A, pp. 13-20).
2. On December 9, 2022, MDHHS sent Petitioner a Verification Checklist (VCL) requesting proof of current child support payments, earned income, residential address and loss of employment (Exhibit A, pp. 21-22). The VCL indicated that proofs were due by December 19, 2022 (Exhibit A, p. 21).
3. On December 9, 2022, MDHHS sent Petitioner a State Emergency Relief Decision Notice indicating that he was denied for SER services for failure to verify certain requested information (Exhibit A, pp. 6-7).

4. On December 27, 2022, MDHHS sent Petitioner a Notice of Case Action indicating that his FAP application was denied, effective November 28, 2022, because his gross income exceeded the limit for the program (Exhibit A, pp. 11-12).
5. On January 27, 2023, Petitioner requested a hearing to dispute the denial of his application for FAP and SER benefits (Exhibit A, pp. 3-4).

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)

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 determined that Petitioner's FAP household was over the income limit for the program based on earned income that Petitioner received from his job at Feed Your Neighborhood (Employer).

To determine eligibility for FAP, MDHHS must consider all earned and unearned income available to the household. BEM 500 (April 2022), pp. 1-5. A group's FAP benefit rate is based on actual income and prospective income. BEM 505 (October 2022), p. 1. Prospective income is the best estimate of income expected to be received by the group during a specific month. *Id.* To determine a group's prospective income, MDHHS is required to seek input from the client whenever possible. *Id.* Each source of income is converted into a standard monthly amount. *Id.* Stable income refers to income received on a regular schedule that does not vary from check to check based on pay schedules or hours worked. *Id.* Fluctuating income is income received on a regular schedule but that varies from check to check, such as a waitress' income whose hours vary each week. *Id.*, p. 2. Contractual or single payment income is that is received in one month that is intended to cover more than one month. *Id.* Irregular income refers to income that is not received on a regular schedule or that is received unpredictably, such as a person self-employed doing snow removal. *Id.*

MDHHS converts stable and fluctuating income to a standard monthly amount by multiplying weekly income by 4.3, multiplying amounts received every two weeks by 2.15 or adding amounts received twice a month. BEM 505 (November 2021), p. 8. For irregular income, MDHHS determines the standard monthly amount by adding the amounts entered together and dividing by the number of months used. *Id.*, p. 9.

The record shows that MDHHS budgeted \$ [REDACTED] for Petitioner's monthly income from Employer based on \$ [REDACTED] that he received biweekly (Exhibit A, p. 1). At the hearing, Petitioner confirmed that he is paid biweekly and his income fluctuates but disputed the amount that MDHHS budgeted for his biweekly income. Petitioner provided a letter from Employer which indicated that he was paid biweekly and that he received approximately \$ [REDACTED] in the last 30 days (Exhibit A, p. 29). It is unclear why MDHHS determined that Petitioner was paid \$ [REDACTED] biweekly based on this information. If Petitioner received \$ [REDACTED] for the entire month, then his biweekly payment would have been approximately \$ [REDACTED]. To determine Petitioner's monthly income, MDHHS should have multiplied \$ [REDACTED] by 2.15, which equals \$ [REDACTED]. Accordingly, MDHHS did not follow policy when calculating Petitioner's earned income.

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 denied Petitioner's FAP application for exceeding the gross income limit.

The State Emergency Relief (SER)

The SER program is established by the Social Welfare Act, MCL 400.1-.119b. MDHHS administers SER pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

In this case, Petitioner applied for SER for assistance with utility services due to a past due water bill. MDHHS notified Petitioner that his application for SER was denied because he failed to verify certain information. At the hearing, MDHHS clarified that the application was denied because Petitioner did not provide proof of a shutoff notice from his water provider, the City of Detroit Water and Sewer Department (DWSD).

SER helps to restore or prevent shutoff of a utility service when service is necessary to prevent serious harm to SER group members. ERM 302 (December 2022), p. 1. Water, sewer and cooking fuel are covered utility services. *Id.* The SER payment must restore or continue service for at least 30 days at the applicant's current residence. *Id.* payments for current charges are not allowed. *Id.* If all eligibility factors are met, MDHHS approves payment up to the fiscal year cap if it will resolve the emergency and if the provider will maintain or restore service for at least 30 days. *Id.*, p. 3. MDHHS is required to verify actual or possible shutoff of water, sewer or cooking gas. *Id.*, p. 4. Verification sources include a disconnect notice for the utility provider, information from the utility provider's secure website, an overdue or delinquency notice when the water or sewer is not disconnected but the arrearage is added to the local tax bill, the client's statement of need for cooking fuel, or collateral contact with the provider. *Id.*, pp. 4-5.

Here, MDHHS determined that Petitioner was not eligible for SER utility services because he did not provide a shutoff notice from DWSD. However, pursuant to policy, SER is available for actual or *possible* shutoffs of water, sewer or cooking gas. ERM 302, p. 4 (emphasis added). Per ERM 302, MDHHS can verify that there is a risk of an actual or possible utility shutoff through various sources, including a disconnect notice from the utility company. *Id.* ERM 302 does not dictate that a shutoff notice is required. Other sources of proof include information from the utility provider's website, an overdue

or delinquency notice when the water or sewer is not disconnected but the arrearage is added to the local tax bill, the client's statement of need for cooking fuel, or collateral contact with the provider. *Id.*

The record shows that Petitioner provided MDHHS a copy of a bill from DWSD, which showed a past due balance of \$329.13 (Exhibit A, p. 26). This is sufficient evidence to demonstrate that Petitioner was facing a possible shutoff of water based on the past due amount. See ERM 302, pp. 4-5.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's SER application.

DECISION AND ORDER

Accordingly, the Department's 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. Reregister and reprocess Petitioner's November 28, 2022 application for SER and FAP benefits;
2. Redetermine Petitioner's eligibility for FAP and SER from November 28, 2022 ongoing;
3. Issue supplements to Petitioner for any FAP benefits that he was eligible to receive but did not from November 28, 2022 ongoing;
4. Issue supplements to Petitioner or his provider for any SER benefits that he was eligible to receive but did not from November 28, 2022 ongoing; and
5. Notify Petitioner of its decision in writing.



Linda Jordan
Administrative Law Judge

LJ/tm

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 :

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Interested Parties

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Via-First Class Mail :

Petitioner

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