



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: March 10, 2023
MOAHR Docket No.: 23-000627
Agency No.: ██████████
Petitioner: ██████████

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 2, 2023 via teleconference. ██████████ Petitioner's Authorized Hearing Representative (AHR) appeared on behalf of Petitioner. Valarie Foley, Hearings Facilitator, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly close 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 September 15, 2022, MDHHS received a Fee Investigation Referral from the Michigan Office of Inspector General (OIG) stating that there was evidence that Petitioner had unreported income from taking ownership of ██████████ (Company) in 2020 (Exhibit A, p. 7). In the course of its investigation, OIG reviewed Petitioner's 2021 tax return, which Petitioner provided on July 21, 2022 (Exhibit A, p. 7). OIG suggested that MDHHS send a Verification Checklist (VCL) to obtain Petitioner's 2020 and 2021 federal tax returns, all schedules for Company, unemployment compensation benefits and information regarding a ██████████ account (Exhibit A, p. 8). OIG opened a fraud investigation to

address any possible past intentional program violation (IPV) and overissuance (OI) of benefits (Exhibit A, p. 8).

3. On September 16, 2022, MDHHS sent Petitioner a Verification Checklist (VCL) requesting proof of Petitioner's complete certified copy of income tax return transcript from IRS for years 2020 and 2021, copies of bank statements for two Chase Bank accounts from June 2022 through August 2022 and verification of all unemployment compensation benefits (Exhibit A, p. 9). Additionally, the VCL asked for information about "self-employment income unknown, unearned income unknown, assets" (Exhibit A, p. 10). The VCL indicated that the proofs were due by September 26, 2022 (Exhibit A, p. 9).
4. On November 14, 2022, Petitioner submitted a Semi-Annual Contact Report to MDHHS.
5. On January 20, 2023, MDHHS terminated Petitioner's FAP benefits.
6. On February 2, 2023, Petitioner filed a Request for Hearing (Exhibit A, pp. 3-6).

CONCLUSIONS OF LAW

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 terminated Petitioner's FAP benefits due to an alleged failure to return requested verifications. However, a Notice of Case Action notifying Petitioner of the termination and the reasons for the termination was not introduced at the hearing. Additionally, MDHHS testified that after receiving Petitioner's Request for Hearing, it reinstated the FAP case and sent another VCL, which included a more detailed request. The subsequent VCL was not admitted at the hearing. At the time of the hearing, MDHHS testified that Petitioner's FAP case was pending due to the outstanding VCL. This Decision will only address events that happened prior to Petitioner's Request for Hearing. Additionally, this case concerns the termination of Petitioner's FAP benefits, not any alleged or suspected overissuance (OI) or intentional program violation (IPV).

MDHHS is required to obtain verification when it is required by policy or information is unclear or incomplete. BAM 130 (January 2022), p. 1. To obtain verification, MDHHS must tell the client what verification is required, how to obtain it and the due date. *Id.*, p. 3. MDHHS is required to use a VCL to request verification from clients. *Id.* If the individual indicates the existence of a disability that impairs their ability to gather verifications and information necessary to establish eligibility for benefits, MDHHS must offer to assist the individual in the gathering of such information. *Id.*, p. 1. 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.* For FAP, if the client contacts MDHHS prior to the due date requesting an extension or assistance in obtaining verifications, MDHHS is required to assist the client but may not grant an extension. *Id.* If the client returns the requested verifications, eligibility will be determined based on the compliance date, following subsequent processing rules. *Id.* Before determining eligibility, MDHHS must give the client a reasonable opportunity to resolve any discrepancies between the client's statements and information from another source. *Id.*, p. 9.

On September 16, 2022, MDHHS requested a variety of documents based on OIG's Fee Investigation which found evidence of unreported income. The VCL included numerous document requests, and it is unclear from the record why MDHHS needed documents regarding past income from 2020 and 2021 to determine current and future eligibility for FAP benefits. Additionally, the record shows that Petitioner had already submitted copies of 2021 tax returns to OIG to assist its investigation (Exhibit A, p., 7). The VCL also requested additional information about "self-employment income unknown, unearned income unknown and assets" (Exhibit A, p. 10). This request is vague and does not satisfy MDHHS' responsibility to inform Petitioner precisely of what information is needed and how to obtain it. See BAM 130, p. 3.

AHR testified that Petitioner returned all documents that were requested by MDHHS and that the alleged unreported income was a result of a misunderstanding due to a language barrier. AHR testified that Petitioner struggled to understand what documents were required due to the language barrier and was unable to obtain guidance from MDHHS. AHR further testified that Petitioner attempted to cooperate fully with MDHHS' requests and submitted as many of the documents as she was able to obtain.

Based on the evidence provided, MDHHS failed to show that it followed policy when it terminated Petitioner's FAP benefits because the VCL was vague, and it is unclear why MDHHS required documentation of past income to determine eligibility for current and future benefits. Additionally, the record shows that Petitioner attempted to comply with the requests for information to the best of Petitioner's ability and MDHHS failed to provide the appropriate level of assistance.

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 terminated Petitioner's FAP benefits.

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. Reinstate Petitioner's FAP case, effective January 20, 2023 ongoing;
2. Redetermine Petitioner's eligibility for FAP benefits from January 20, 2023 ongoing, requesting additional verification as required by policy and providing the appropriate assistance to Petitioner, as necessary;
3. Issue supplements to Petitioner for any FAP benefits that Petitioner was eligible to receive but did not, from January 20, 2023 ongoing; and
4. 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

