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GOVERNOR

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

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DIRECTOR

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Date Mailed: April 27, 2023
MOAHR Docket No.: 23-001667
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 via telephone conference line on April 20, 2023. Petitioner appeared and was unrepresented. Nicole Saunders, case/foster care worker of Community Care as well as Petitioner's application representative (AR), testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Eileen Kott, manager.

ISSUE

The issue is whether MDHHS properly denied Petitioner's application for Food Assistance Program (FAP) benefits.

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 February 6, 2023, MDHHS received Petitioner's application requesting FAP benefits signed by Petitioner's AR.
2. On February 16, 2023, during an application interview, Petitioner's AR reported to MDHHS Petitioner's receipt of an independent living stipend (ILS).
3. On February 16, 2023, MDHHS mailed Petitioner a Verification Checklist (VCL) requesting proof of the ILS by February 27, 2023. The VCL was not mailed to Petitioner's AR.
4. As of March 6, 2023, MDHHS had not received Petitioner's verification of ILS.

5. On March 6, 2023, MDHHS denied Petitioner's application due to a failure to verify unearned income.
6. On March 11, 2023, Petitioner requested a hearing disputing the denial of FAP benefits.

CONCLUSIONS OF LAW

The 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 the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. FAP policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a denial of FAP benefits. A Notice of Case Action dated March 6, 2023, stated that Petitioner's application was denied due to a failure to verify unearned income. Exhibit A, pp. 23-25. MDHHS specified that Petitioner failed to verify an ILS.

ILSs are payments made to a foster child who is in an independent living arrangement. BEM 503 (January 2023) p. 5. For FAP benefits, ILSs are countable as unearned income. *Id.*, p. 6.

Petitioner, through an authorized representative, applied for FAP benefits on [REDACTED] 2023. Exhibit A, pp. 5-11. MDHHS documented Petitioner's receipt of an ILS on when Petitioner's AR was interviewed on February 16, 2023. Exhibit A, pp. 12-18. The documentation implies that the AR reported Petitioner's income as an ILS.

Petitioner's AR contended that an ILS is not countable income. To support the contention, Petitioner's AR cited policy stating recipients of an ILS are excluded from the program group. *Id.*, p. 5. The contention is misguided because the cited policy applies to cash assistance and day care programs, not FAP.¹

Petitioner's AR also contended that Petitioner's income is not an ILS because Petitioner is not in an independent living arrangement. Even if true, a conclusion that Petitioner's income should be excluded does not follow. First, Petitioner's AR reported the income as an ILS; MDHHS cannot be faulted for requesting and expecting verification accordingly. Secondly, if the income is not an ILS, then Petitioner, through the AR, has the burden to report the type of income that Petitioner receives. Unless income is specifically excluded by policy, it is countable. BEM 500 (April 2022) p. 3.

¹ Furthermore, the cited policy refers to persons being excluded from a benefit group. If applied to the present case, Petitioner's income would not be countable, but Petitioner would also not be countable as a group member.

Given the evidence, Petitioner's income is either an ILS or not established as excludable income. In either case, MDHHS properly expected verification of Petitioner's income.

MDHHS sent Petitioner a VCL on February 16, 2023, requesting proof of ILS by February 27, 2023. Exhibit A, pp. 19-21. MDHHS contended it properly denied FAP benefits on March 6, 2023, after not receiving verification of ILS by the VCL due date.

For all programs, MDHHS is to tell the client what verification is required, how to obtain it, and the due date. BAM 130 (July 2021) p. 3. MDHHS is to send a VCL to request verification. *Id.* MDHHS is to allow the client at least 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. *Id.*, p. 7. MDHHS is to send a negative action notice when:

- The client indicates refusal to provide a verification, or
- The time period given has elapsed and the client has not made a reasonable effort to provide it. *Id.*

MDHHS defines an authorized representative as a person who applies for assistance on behalf of the client and/or otherwise acts on his or her behalf. BAM 110 (October 2022) p. 9. The AR assumes all the responsibilities of a client. *Id.* To establish the client's eligibility, the AR must be familiar enough with the circumstances to complete the application, answer interview questions, and collect needed verification. *Id.*

Clients have the responsibility to timely return verification to MDHHS. An application AR assumes the same responsibility. Unless a VCL is sent to the AR, the AR cannot be expected to fulfill the responsibility. Thus, an application AR has the implied right to proper notice of verification requests. MDHHS testimony acknowledged that a VCL was not sent to Petitioner's AR.² By not mailing a VCL to Petitioner's AR, MDHHS failed to properly request verification. Thus, the denial of Petitioner's FAP benefit application due to a failure to verify income was improper. As a remedy, Petitioner is entitled to reprocessing of the application with any request for verification being sent to the AR.

DECISION AND ORDER


The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's application for FAP benefits. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reregister Petitioner's FAP application dated [REDACTED] 2023;
- (2) Reprocess Petitioner's application subject to the finding that MDHHS failed to properly request verification from Petitioner's AR; and
- (3) Issue notice and supplements, if any, in accordance with policy.

² MDHHS sent Petitioner a VCL to the same address that was reported as AR's address. Testimony from the AR also stated that correspondence addressed to clients is intercepted by management. Thus, the evidence suggested that Petitioner's AR should have received the VCL sent to Petitioner. Nevertheless, the circumstance does not absolve MDHHS of the obligation to send a VCL directly to the AR.

The actions taken by MDHHS are **REVERSED**.

CG/mp



Christian Gardocki
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
MDHHS-Wayne-76-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

Via-First Class Mail :

Petitioner
[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]