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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: July 28, 2023  
MOAHR Docket No.: 23-002640  
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 July 20, 2023 via teleconference. Petitioner appeared and represented herself. Susan Ferrante, Eligibility Specialist, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

**ISSUE**

Did MDHHS properly deny 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 March 29, 2023, Petitioner applied for FAP benefits (Exhibit A, p. 8). Petitioner reported that she was currently working at the ██████████ but that her hours had been recently reduced (Exhibit A, p. 13).
2. On April 27, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that her application for FAP was denied because Petitioner exceeded the income limit for the program (Exhibit A, pp. 35-36). The determination was based on \$ ██████████ in monthly income (Exhibit A, p. 36).
3. On May 8, 2023, Petitioner filed a request for hearing (Exhibit A, p. 3).

## 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 denied Petitioner's application for FAP for exceeding the gross income limit for the program. Petitioner disputed MDHHS' calculation of her ongoing earned income.

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, 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.

MDHHS is required to obtain verification when it is required by policy or information is unclear or incomplete. BAM 130 (January 2023), 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 program eligibility, MDHHS must give the client a reasonable opportunity to resolve any discrepancy between the client's statement and another source. *Id.*, p. 9.

Here, Petitioner disputed MDHHS' calculation of her earned income from Employer. The record shows that Petitioner reported that her hours at Employer were recently reduced. At the hearing, MDHHS acknowledged that based Petitioner's monthly earned income calculation on full-time employment, and that it did not attempt to verify the reduction in hours with Petitioner. Additionally, the Work Number Report presented by MDHHS reveals a substantial fluctuation in Petitioner's hours and earnings at Employer (Exhibit A, pp. 28-29). More information is needed to estimate Petitioner's wages going forward and whether certain amounts should be excluded as irregular income. Policy requires MDHHS to consult with the client to determine the best estimate of ongoing and future income whenever possible and to verify income information with the client when there is a discrepancy. The record shows that it failed to do so here.

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 FAP application.

### **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. Reregister and reprocess Petitioner's March 29, 2023 FAP application, requesting additional information from Petitioner, if necessary;

2. Issue Petitioner supplemental payments for any FAP benefits that she was eligible to receive, but did not, from March 29, 2023 ongoing; and
3. Notify Petitioner of its decision in writing.



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**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 :**

**DHHS**

Chelsea McCune  
Macomb County DHHS Warren Dist.  
13041 E 10 Mile  
Warren, MI 48089

**MDHHS-Macomb-20-  
Hearings@michigan.gov**

**Interested Parties**

M. Holden  
D. Sweeney  
BSC4

**Via-First Class Mail :**

**Petitioner**

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