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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 18, 2023
MOAHR Docket No.: 23-002822
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 10, 2023 via teleconference. Petitioner appeared and represented himself. Corlette Brown, Hearings Facilitator, and Tamara Northington, 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 due to excess income?

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 December 21, 2022, Petitioner submitted an application for FAP (Exhibit A, p. 3). Petitioner reported receiving \$████████ per month in self-employment before expenses and reported monthly expenses in the amount of \$2,500.00 (Exhibit A, p. 8).
2. On December 29, 2022, MDHHS conducted an eligibility interview with Petitioner by phone (Exhibit A, p. 11). Petitioner reported that he received approximately \$████████ per month in self-employment income (Exhibit A, p. 14).
3. On December 29, 2022, MDHHS sent Petitioner Self-Employment Income and Expense Statements for September, October and November 2022 (Exhibit A, pp.

18-23). Respondent completed these forms, reporting self-employment income from [REDACTED] (Employer 1) and returned them to MDHHS (Exhibit A, pp. 18-23).

4. On February 17, 2023, the MDHHS Office of Inspector General (OIG) completed an investigation regarding Respondent's FAP eligibility (Exhibit A, p. 27). The investigation concluded that Petitioner was the registered agent for Employer 1 and [REDACTED] (Employer 2), and that Employer 2 had two employees and estimated sales of \$36,041.00 (Exhibit A, p. 27). OIG recommended that MDHHS sent a VCL regarding income from Employer 2 (Exhibit A, p. 27).
5. On February 22, 2023, MDHHS issued a Notice of Case Action closing Petitioner's FAP case, effective April 1, 2023 ongoing because his gross income exceeded the income limit for the program (Exhibit A, p. 30). MDHHS calculated his monthly income as \$[REDACTED] per month (Exhibit A, p. 30).
6. On February 27, 2023, Petitioner requested a hearing to dispute the denial of his application for FAP.

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 FAP application for exceeding the gross income limit for the program. Petitioner disputed the calculation of his monthly income.

To determine income eligibility for FAP, MDHHS must consider all earned and unearned income. Individuals who run their own businesses are self-employed. BEM 502 (October 2019), p. 1. However, income from S-Corporations and Limited Liability Companies (LLCs) is not considered self-employment. BEM 502, p. 1. MDHHS counts income a client receives from an S-Corp or LLC as wages, even if the client is the owner. BEM 501 (July 2022), p. 5. Wages are the pay an individual receives from an organization, including an S-Corp or LLC. *Id.*, p. 6. Wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. *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.* Before determining eligibility, MDHHS is required to give the client a reasonable opportunity to resolve any discrepancy between the client's statements and information from another source. *Id.*, p. 9.

Here, MDHHS determined that Petitioner was not eligible for FAP due to excess income and calculated his monthly income as \$██████████ per month. When asked how it reached that amount, MDHHS testified that it was the yearly income from Employer 2 divided by 12. Pursuant to OIG's investigation, Employer 2 had an estimated sales of \$██████████. Dividing this amount by 12 equals approximately \$██████████. MDHHS presumably added the \$██████████ in reported income from Employer 1 to the estimated amount from Employer 2. However, MDHHS did not have enough information regarding Petitioner's wages from Employers 1 or 2 to calculate Petitioner's income based on these sources. It is unclear what time period the earnings from Employer 2 covered and what role Petitioner played in the company. The OIG report recommended that MDHHS send a verification checklist (VCL) for more information. No evidence was presented that MDHHS sent a VCL to Petitioner regarding this information.

Once MDHHS received information that Employer 1 was an LLC, it should have confirmed Petitioner's wages from Employer 1 and asked for verification of those wages. Because Employer 1 was an LLC, MDHHS was required to treat the earnings from Employer 1 as employment wages rather than self-employment, even though Petitioner was the owner of the company. Additionally, MDHHS erred by failing to verify the income Petitioner purportedly received from Employer 2. Pursuant to policy, MDHHS is required to verify information when an eligibility factor is unclear, inconsistent, or incomplete. BAM 130, p. 1. Furthermore, MDHHS is required to allow clients a reasonable opportunity to resolve any discrepancies between their reported statements and information from another source. *Id.*, p. 9. The record shows that MDHHS failed to do so in this case.

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 application for FAP.

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 Petitioner's application for FAP dated December 21, 2022;
2. Redetermine Petitioner's eligibility for FAP, from December 21, 2022 ongoing, requesting additional verification from Petitioner, as necessary;
3. Issue supplemental payments to Petitioner for any FAP benefits that he was eligible to receive, but did not, from December 21, 2022 ongoing; and
4. Notify Petitioner in writing of its decision.



Linda Jordan
Administrative Law Judge

LJ/tm

