



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: December 8, 2023
MOAHR Docket No.: 23-007495
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 November 30, 2023. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Starkisha Snead, specialist.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of August 2023, Petitioner was an ongoing recipient of FAP benefits.
2. On an unspecified date, the Office of Inspector General (OIG) investigated Petitioner for having expenses exceeding income and recommended that Petitioner's FAP eligibility be terminated.
3. On August 16, 2023, based on the discrepancy between income and expenses, MDHHS mailed Petitioner a Verification Checklist (VCL) requesting proof of an unspecified unearned income by August 28, 2023.

4. On August 29, 2023, MDHHS terminated Petitioner's FAP eligibility beginning October 2023.
5. On October 16, 2023, Petitioner applied for FAP benefits and reported a monthly rent obligation of \$1,000.
6. On October 26, 2023, Petitioner requested a hearing to dispute the termination of FAP benefits beginning October 2023.
7. On November 7, 2023, MDHHS approved Petitioner for FAP benefits beginning October 16, 2023, based on a monthly rent obligation of \$1,000 and monthly income of \$11.

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 termination of FAP benefits. Exhibit A, pp. 4-5. MDHHS testified that a Notice of Case Action dated August 23, 2023, stated that Petitioner's FAP eligibility would end October 2023. Two reasons for closure were stated.

The first stated reason for closure was Petitioner's alleged failure to verify rent. There is no known MDHHS policy authorizing a termination of FAP benefits for a failure to verify rent. Without a policy authorizing benefit termination, it can be concluded that MDHHS did not properly terminate Petitioner's FAP eligibility due to a failure to verify rent.¹

The second reason for closure was Petitioner's failure to verify information. MDHHS testimony referenced Petitioner's failure to verify assets; however, the stated reason for termination on the written notice was Petitioner's failure to verify unearned income.

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 use the DHS-3503, Verification Checklist (VCL), to request verification. *Id.* MDHHS is to allow the client 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

¹ A failure to verify rent may be relevant if MDHHS is ordered to reprocess Petitioner's FAP eligibility. If Petitioner did fail to verify rent, then MDHHS may be justified in budgeting \$0 as a housing expense in the FAP budget (see BAM 554). However, the evidence suggested Petitioner might have not explained to MDHHS how she paid rent given reported income, but she did not fail to verify having a rental obligation.

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

MDHHS testified that Petitioner's ongoing FAP benefit case was concerning because Petitioner's reported expenses substantially exceeded Petitioner's reported income. MDHHS did not provide specific evidence of Petitioner's reported circumstances at the time of closure. However, a Notice of Case Action dated November 7, 2023, approved Petitioner for FAP benefits beginning October 16, 2023, based on a monthly rent of \$1,000 and a monthly income of \$11 from self-employment.² Exhibit A, pp. 37-44. Presumably, similar income and expenses roused MDHHS's suspicions when it initiated termination of Petitioner's FAP eligibility on August 23, 2023.

To substantiate its suspicions, MDHHS requested that OIG investigate Petitioner's claim of income and expenses. MDHS provided no investigation report but stated that the investigator found Petitioner to be uncooperative. A MDHHS specialist also documented that Petitioner refused to explain how her expenses were met based on reported income during an interview dated October 25, 2023. Exhibit A, pp. 14-20. Notably, MDHHS still approved Petitioner for FAP benefits despite Petitioner's alleged failure to answer the interview question. It is notable because no known policy allows MDHHS to take a negative action based on a client's failure to explain how expenses can exceed income.

MDHHS also mailed Petitioner a VCL on August 16, 2023, requesting verification of an unspecified unearned income. It was not disputed that Petitioner provided no proof of unearned income by the VCL due date of August 28, 2023. Thus, MDHHS contended, it was justified in terminating Petitioner's FAP eligibility.

MDHHS could not explain what unearned income that Petitioner failed to verify. MDHHS testimony suggested that Petitioner, when pressed by OIG and or her specialist, reported that she saved unemployment income to pay-off expenses. MDHHS failed to explain how Petitioner's reporting justified a request for unearned income that Petitioner no longer claimed to have.

The evidence failed to establish that MDHHS had a proper basis for requesting proof of unearned income from Petitioner. Without a basis for requesting proof of unearned income, MDHHS cannot terminate FAP benefits based on a client's alleged failure to verify unearned income. Thus, MDHHS improperly terminated Petitioner's FAP eligibility beginning October 2023. As a remedy, MDHHS will be ordered to reprocess Petitioner's FAP eligibility beginning October 2023.³

² Various income and asset documents were submitted by Petitioner. Exhibit A, pp. 24-36.

³ Petitioner reapplied for FAP benefits on October 16, 2023. Exhibit A, pp. 7-13. MDHHS approved Petitioner's FAP eligibility beginning with the application date. Thus, Petitioner appears only entitled to FAP benefits covering the first 15 days of October 2023.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FAP eligibility beginning October 2023. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reprocess Petitioner's FAP eligibility beginning October 2023 subject to the finding that Petitioner did not fail to verify unearned income; and
- (2) Issue notice and supplements, if any, in accordance with all MDHHS policy.

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

CG/nr



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

Yvonne Hill
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Interested Parties

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Via-First Class Mail :

Petitioner

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