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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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ACTING DIRECTOR

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Date Mailed: December 15, 2023
MOAHR Docket No.: 23-007741
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 December 6, 2023, via teleconference. ██████████ (Spouse), ██████████ spouse and household member, appeared on behalf of Petitioner. Kimberly Calhoun, Family Independence Manager, and J. Valbrun, Assistance Payments Worker, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly deny Petitioner’s application for FAP and properly terminate Petitioner’s MA coverage?

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 MA coverage.
2. On ██████████, 2023, Petitioner applied for FAP (Exhibit A, p. 1).
3. On September 27, 2023, MDHHS sent Petitioner a Self-Employment Income and Expense Statement for July (Exhibit A, p. 15).

4. On September 27, 2023, MDHHS sent Petitioner a Self-Employment Income and Expense Statement for June – August (Exhibit A, p. 17).
5. On September 27, 2023, MDHHS sent Petitioner a Self-Employment Income and Expense Statement for August (Exhibit A, p. 19).
6. On September 27, 2023, MDHHS sent Petitioner a Verification Checklist (VCL) for FAP requesting proof of loss of employment for Spouse and other self-employment for Petitioner (Exhibit A, p. 21). Regarding self-employment income, the VCL requested one of the following: recent business receipts to date, recent accounting or other business records to date; or recent income tax return (Exhibit A, pp. 21-22). The VCL indicated that proofs were due by October 9, 2023 (Exhibit A, p. 21).
7. On October 12, 2023, MDHHS sent Petitioner a VCL for MA requesting proof of all earned and unearned income for the last thirty days (Exhibit A, pp. 11-12). The VCL also requested proof of self-employment/expense records over the last year, examples of proof include copies of check stubs, self-employment records or a statement from the source of income (Exhibit A, p. 12). The VCL indicated that proofs were due by October 23, 2023 (Exhibit A, p. 11).
8. On October 28, 2023, MDHHS sent Petitioner a Health Care Coverage Determination Notice indicating that Petitioner's MA coverage would be closed, effective December 1, 2023 ongoing, due to a failure to return verification of income (Exhibit A, p. 10).
9. On November 22, 2023, Petitioner filed a Request for Hearing to dispute MDHHS' determinations regarding household FAP and MA benefits (Exhibit A, pp. 4-9).

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.

Medicaid (MA) is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. MDHHS administers MA pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, MDHHS denied Petitioner's application for FAP and terminated Petitioner's MA coverage for failure to return the requested information regarding Petitioner's self-employment income.

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 he 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, MDHHS alleged that FAP was denied and MA terminated because it requested three months of Petitioner's self-employment income and it only received one month. Additionally, MDHHS testified that MA was denied because it did not receive a Schedule C tax form for Petitioner. At the hearing, Spouse credibly testified that she only received one self-employment form for Petitioner, and it requested self-employment income information from June through August. However, she was unsure how to fill out the form because there was only space for one month. She filled out the form for the month of August and returned it to MDHHS (Exhibit A, pp. 42-43). Spouse testified that she did not receive the other two self-employment forms. Additionally, she provided MDHHS with several other documents, including bank statements, tax documents, and receipts (Exhibit A, pp. 35-53). Spouse testified that she was attempting to comply with MDHHS' verification requests but was confused about what documentation was needed. She further testified that MDHHS sent her an appointment notice and then did not call her at the time and date of the appointment.

The record shows that Petitioner and Spouse made reasonable attempts to comply with MDHHS' verification requests. MDHHS created confusion by sending multiple requests

that asked for different time periods of self-employment income. For example, on the VCL for MA, MDHHS requested one year of self-employment income and on the self-employment forms, it asked for three months. Additionally, MDHHS failed to contact Petitioner after it sent an appointment notice stating that it would contact her at a particular time and date. Finally, MDHHS testified that it terminated MA coverage because it had not received Petitioner's Schedule C tax form, however, there is no evidence that it specifically asked for that form. MDHHS is required to tell clients specifically what verification is needed and how to obtain it. The record shows that it failed to do so in this case and that Petitioner was attempting in earnest to comply with its requests.

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 the MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's FAP application and terminated MA coverage.

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 [REDACTED], 2023 application for FAP;
2. Issue Petitioner supplemental payments for any FAP benefits he was entitled to receive, but did not, from September 23, 2023 ongoing;
3. Redetermine Petitioner's MA eligibility, effective December 1, 2023 ongoing;
4. If eligible, provide Petitioner with the most beneficial coverage, from December 1, 2023 ongoing; and
5. Notify Petitioner of its decision(s) in writing.

LJ/tm



Linda Jordan
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
Denise Key-McCoggle
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27260 Plymouth Rd
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Petitioner
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