

GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

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

Date Mailed: December 21, 2023
MOAHR Docket No.: 23-007894
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 12, 2023, via teleconference. Petitioner appeared and represented herself. Silhouette O'Neal, 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 Food Assistance Program (FAP) and Child Development and Care (CDC) 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 [REDACTED], 2023, Petitioner applied for FAP and CDC benefits (Exhibit A, p. 7).
2. On September 21, 2023, MDHHS sent Petitioner a Verification Checklist (VCL) for FAP and CDC, requesting proof of household earned income (Exhibit A, pp. 23-24). The VCL indicated that proofs were due by October 2, 2023 (Exhibit A, p. 23).
3. On September 22, 2023, MDHHS conducted an eligibility interview with Petitioner (Exhibit A, p. 16).

4. On October 19, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that FAP was denied, September 20, 2023 ongoing, for failure to verify eligibility information (Exhibit A, pp. 26-27).
5. On October 20, 2023, MDHHS sent Petitioner a Notice of Case Action indicating that CDC was denied, September 10, 2023 ongoing, for failure to verify eligibility information (Exhibit A, pp. 31-32).
6. On November 3, 2023, Petitioner filed a Request for Hearing regarding her FAP and CDC benefits (Exhibit A, pp. 4-5).

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.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, 42 USC 601-619, 670-679c, and 1397-1397m-5; the Child Care and Development Block Grant of 1990, PL 101-508, 42 USC 9858 to 9858q; and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193. The program is implemented by 45 CFR 98.1-99.33. MDHHS administers the program pursuant to MCL 400.10 and provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Code, R 400.5001-.5020.

In this case, MDHHS denied Petitioner's application for FAP and CDC benefits because it alleged that she did not provide verification of earned income as required.

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.* 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.

At the hearing, Petitioner credibly testified that MDHHS initially instructed her that she needed to fill out self-employment forms because she was a 1099 worker. MDHHS acknowledged that it initially instructed Petitioner to submit self-employment forms but after supervisor review, it determined that the income was considered employment income, rather than self-employment income. MDHHS' determination was based on Petitioner's report that her employer pays her directly and sets her schedule.

MDHHS is required to determine whether income is from employment or self-employment based on available information and must document its rationale. BEM 502 (October 2019), pp. 1-2. The following are indicators of self-employment: the individual sets own work hours; the individual provides own tools used for the job; the individual is responsible for the service being provided and for the methods used to provide the service; the individual collects payment for the services provided from the individual paying for them. *Id.* MDHHS should not consider the following when making the determination: withholding of income tax from payment made to individual, whether the individual files income tax, or whether the individual receives a federal Form 1099. *Id.*

MDHHS testified that it attempted to contact Petitioner to explain what was needed but was initially unable to reach her. After MDHHS denied her application, Petitioner testified that she attempted to obtain the verification from her employer but there was a delay because her employer was not cooperating.

Based on the record, MDHHS created confusion by initially instructing Petitioner to complete self-employment forms instead of obtaining employment verification directly from her employer. After the issue was clarified, Petitioner attempted in earnest to comply with MDHHS' verification requests. MDHHS is required to tell clients exactly what verification is needed and how to obtain it. Due to the initial confusion that MDHHS created, 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 did not act in accordance with Department policy when it denied Petitioner's application for FAP and CDC benefits.

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 and CDC benefits;
2. Determine Petitioner's eligibility for FAP and CDC, effective September 20, 2023 ongoing;
3. Issue supplemental payments to Petitioner and/or Petitioner's provider(s) for any FAP and/or CDC benefits that she was eligible to receive, but did not, from September 20, 2023 ongoing; and
4. Notify Petitioner of its decision(s) in writing.



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
Yvonne Hill
Oakland County DHHS Madison
Heights Dist.
30755 Montpelier Drive
Madison Heights, MI 48071
**MDHHS-Oakland-DistrictII-
Hearings@michigan.gov**

Interested Parties
M. Holden
N. Denson-Sogbaka
B. Cabanaw
L. Brewer-Walraven
BSC4

Via-First Class Mail :

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