



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED] MI [REDACTED]

Date Mailed: February 1, 2024
MOAHR Docket No.: 23-009495
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner

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 by telephone on January 25, 2024. Petitioner and her spouse, [REDACTED] attended and were assisted by their daughter Rahas Naisan, who served as translator and authorized hearing representative (AHR). The Department of Health and Human Services (Department) was represented by Megan latonna, Hearing Facilitator and Eligibility Specialist (ES) Worker.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits effective December 1, 2023 for failure to provide verification of 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. Petitioner was an ongoing recipient of FAP benefits.
2. On October 4, 2023, a redetermination application for FAP benefits was sent to Petitioner. (Exhibit A, p. 8).
3. On October 24, 2023, Petitioner returned the completed redetermination application to the Department. (Exhibit A, pp. 3 and 8 – 12).

4. The self-employed status of Petitioner's spouse, [REDACTED] (HM), was confirmed on the redetermination application. (Exhibit A, p. 10).
5. On November 15, 2023, HM completed the redetermination interview with the Department. (Exhibit A, pp. 13 – 19).
6. HM confirmed his status as a self-employed individual during the redetermination interview. (Exhibit A, pp. 16 – 17).
7. The Department determined HM to not be self-employed based on his 2022 income tax return which reflects HM's income to come from his limited liability company (LLC). (Exhibit A, p. 17).
8. On November 15, 2023, the Department sent a Verification Checklist (VCL) and Employment Verification Form to Petitioner. (Exhibit A, pp. 20, 23).
9. The Employment Verification Form was addressed to HNM Distributor, LLC (Company). (Exhibit A, p. 23).
10. On November 29, 2023, the Employment Verification Form was returned, unsigned, with the notation "not employed here" on the first and second pages of the form and "not employed" on the last page of the form. (Exhibit A, pp. 26 – 28).
11. On December 12, 2023, the Department issued a Notice of Case Action closing Petitioner's FAP case effective December 1, 2023 due to failure to return verification documents. (Exhibit A, pp. 29 – 30).
12. On December 22, 2023, Petitioner requested a hearing regarding the closure of the FAP case. (Exhibit A, pp. 5 – 6).

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. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

On December 22, 2023, Petitioner requested a hearing regarding the closure of her FAP case. (Exhibit A, pp. 5 – 6). On December 12, 2023, the Department issued a

Notice of Case Action closing Petitioner's FAP case effective December 1, 2023 due to failure to return verification of self-employment expenses and earned income payments. (Exhibit A, pp. 29 – 30). At the hearing, the Department explained it required verification of income to complete a redetermination application.

The Department must redetermine an individuals' eligibility for active programs at least every 12 months¹ and includes a thorough review of all eligibility factors. BAM 210 (October 2023), pp. 1, 3. Benefits cease at the end of the current benefit period unless a redetermination is completed and a new benefit period is certified. BAM 210, p. 3.

In this case, Petitioner was previously certified through November 30, 2023 and due for her annual redetermination. During the redetermination process, the Department reviewed documents provided by Petitioner, a 2022 income tax return, and noted that HM's income is from a Company, which is an LLC. (Exhibit A, p. 17). Income from S-Corporations and LLCs are not considered self-employment income for purposes of FAP benefits. BEM 502 (October 2019), p. 1, 9.

The Department considers the income a client receives from an LLC as wages, even if the client is the owner. Wages are the pay an employee receives from another individual organization or S-Corp/LLC. Wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance. BEM 501 (July 2022), p. 6. Acceptable verification sources for wages are outlined in BEM 501 at pp. 11 – 12. Individuals who run their own businesses are self-employed. This includes but is not limited to selling goods and providing direct services. However, LLCs are not self-employment and acceptable verification sources for self-employment do not apply to LLCs. BEM 502, pp. 1, 7 – 8.

As part of the redetermination process, the Department sent a VCL and Employment Verification Form to Petitioner on November 15, 2023. (Exhibit A, pp. 20, 23). Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements and is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (October 2023), p. 1. The VCL told the client what verification was required, how to obtain it, and the due date. BAM 130, p. 3.

Here, the VCL instructs Petitioner to submit three types of verification documents regarding HM's income from:

- Other Self Employment,
- Wages, Salaries, Tips, and Commissions, and
- For Employer (HNM Distributor LLC].

¹ In cases with unstable circumstances, a review may be required more frequently. That is not an issue in this case.

The VCL also requested as follows:

additional information about: We need proof of all your earned and unearned income. Provide proof of the last 30 days for employment, unemployment, social security benefits, pension, etc. Also, provide 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 your source of income.

(Exhibit A, pp. 20 – 21).

The Department's determination that HM is employed by his LLC and not self-employed is not consistent with the VCL as the documents requested seek both self-employment and employee income verification for HM despite his income being from one single source. Therefore, it is unclear whether the Department instructed Petitioner to submit the verification of income as a self-employed individual or as an employee of his LLC.

Notwithstanding the foregoing, the Department was provided a copy of Petitioner and HM's 2022 income tax return during the redetermination process. (Exhibit A, p. 17). The Department also testified that it received "self-employment expense statements" from Petitioner, however the Notice of Case Action states that verification of self-employment expense and earned income payment were not returned for HM. (Exhibit A, p. 30).

Although the Notice of Case Action stated that the FAP case closed due to Petitioner's failure to provide verification of self-employment expenses and employment income, the Department did not present any evidence in support of its position that the FAP case closure was due to failure to provide verification of self-employment expenses. To the contrary, the Department's position was that HM was employed by the LLC and not self-employed. Therefore, to the extent the Department closed Petitioner's FAP case due to failure to verify self-employment expenses, the Department has failed to support its position. Further, because the VCL did not clearly identify the verifications the Department needed from Petitioner, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's case due to failure to verify.

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 Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FAP case based on failure to provide requested verifications.

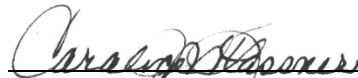
DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT 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. Redetermine Petitioner's eligibility for FAP benefits, effective December 1, 2023 ongoing;
2. If Petitioner is eligible for any supplemental FAP benefits, issue supplemental payments to Petitioner for any FAP benefits that she was eligible to receive but did not, from December 1, 2023 ongoing; and
3. Notify Petitioner of its decision in writing.

CML/ml



Caralyce M. Lassner
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
Dawn Tromontine
Macomb County DHHS Sterling Heights Dist.
41227 Mound Rd.
Sterling Heights, MI 48314
MDHHS-Macomb-36-Hearings@michigan.gov

Interested Parties

BSC4
M Holden
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N Denson-Sogbaka

Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]