



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: June 6, 2022
MOAHR Docket No.: 22-002005
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 telephone hearing was held on May 31, 2022. The Petitioner appeared and represented himself. The Department of Health and Human Services (MDHHS) was represented by Priya Johnson, Supervisor.

ISSUE

Did MDHHS properly close Petitioner's Food Assistance Program (FAP) case for failure to return verification of self-employment 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 for a group size of two, consisting of his wife and himself.
2. Petitioner was required to complete a redetermination of FAP benefits in March 2022.
3. On March 8, 2022, MDHHS issued a verification checklist to Petitioner, requesting that he submit documentation of his self-employment income by March 18, 2022.
4. On March 22, 2022, Petitioner submitted to MDHHS his 2021 tax return as proof of his self-employment income (Exhibit A, pp. 5-54).

5. On April 25, 2022, MDHHS issued a Notice of Case Action to Petitioner, informing him that his FAP case was closed, effective April 1, 2022, for failure to return verification of self-employment income (Exhibit A, pp. 55-59).
6. On May 3, 2022, MDHHS received Petitioner's timely submitted request for hearing, stating that he has submitted all self-employment documentation, including his tax return (Exhibit A, pp. 3-4).

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.

At the start of the hearing, Petitioner was advised that his FAP case is currently pending. MDHHS verified that they have now received Petitioner's self-employment information, but requested he send his wife's earned income information. Petitioner wished to continue with his request for a hearing regarding his FAP case closure effective April 1, 2022 for failure to return verification of self-employment payments.

In this case, Petitioner's FAP case closed because MDHHS stated that Petitioner failed to submit verification of self-employment income at the time of redetermination. The redetermination process includes thorough review of all eligibility factors. BAM 210 (November 2021) p. 1. The amount of self-employment income before any deductions is called total proceeds. Countable income from self-employment equals the total proceeds minus allowable expenses of producing the income. BEM 502 (October 2019), pp. 1-3. Allowable expenses are the higher of 25 percent of the total proceeds, or actual expenses if the client chooses to claim and verify the expenses. BEM 502, p. 3. BEM 502 provides a list of expenses that are allowed when determining self-employment countable income, pp. 3-4. MDHHS is required to seek input from the client to establish an estimate, whenever possible. Prospective budgeting requires knowledge of an individual's current, past and anticipated future circumstances. The primary source to determine self-employment income is income tax return if the client hasn't started or ended self-employment or received an increase/decrease in income and the tax return is still representative of future income. BEM 502, p. 7.

Here, MDHHS issued a Verification Checklist (VCL) to Petitioner on March 8, 2022, requesting that he provide self-employment income information to MDHHS by March 18, 2022. It is undisputed that Petitioner submitted his 2021 income tax return on March 22, 2022. While this is after the due date on the VCL, it is prior to the end of his certification period on April 1, 2022. MDHHS concluded that the 2021 income tax return was insufficient proof of self-employment income because it did not include the Schedule C document. MDHHS admits that no one from the Department notified Petitioner or requested the Schedule C document. MDHHS was required by BEM 502 to seek input from Petitioner regarding his self-employment income and expenses and should have notified him regarding the additional documentation requested to process his redetermination. Petitioner stopped receiving FAP benefits on April 1, 2022. Verifications must be provided by the end of the current benefit period or within 10 days after they are requested, whichever allows more time. BAM 210, pp. 17-18. Since Petitioner provided the requested information prior to the end of the certification period, MDHHS should not have closed Petitioner's FAP case. If the verification was insufficient to determine eligibility, MDHHS should have notified Petitioner of the additional documentation necessary. Therefore, MDHHS did not act in accordance with policy in processing Petitioner's redetermination of FAP benefits and subsequent case closure.

Although MDHHS closed Petitioner's FAP case effective April 1, 2022, MDHHS did not issue a Notice of Case Action informing Petitioner of this case closure until April 25, 2022. The client must receive a written notice of all case actions affecting eligibility or amount of benefits. When a case action is completed, it must specify: the action being taken by the department, the reason(s) for the action, and the specific manual item(s) that cites the legal base for an action, or the regulation, or law itself. BAM 600 (March 2021) p. 1. While waiting for the hearing decision, recipients must continue to receive the assistance authorized prior to the notice of negative action when the request was filed timely. Upon receipt of a timely hearing request, MDHHS must reinstate program benefits to the former level for a hearing request filed because of a negative action. BAM 600, p. 25. Here, MDHHS did not notify Petitioner regarding the closure of his FAP case until nearly a month after the effective closure date. Petitioner was then unable to request a hearing until after his benefits stopped, contrary to policy allowing assistance to continue pending an administrative hearing and decision. Again, MDHHS has failed to act in accordance with policy regarding Petitioner's FAP 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 the Department did not act in accordance with Department policy when it closed Petitioner's FAP case.

DECISION AND ORDER

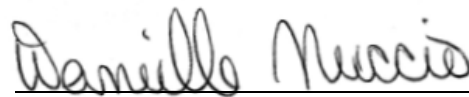
Accordingly, MDHHS' decision is **REVERSED**.

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. Reprocess Petitioner's 2022 redetermination of FAP benefits;
2. Notify Petitioner in writing if additional verifications are requested;
3. If Petitioner is eligible for FAP benefits, issue supplements to Petitioner for any FAP benefits he was eligible to receive but did not from April 1, 2022 ongoing;
4. Notify Petitioner of its decision in writing.

DN/mp



Danielle Nuccio

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 :

MDHHS-Oakland-6303-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

Via-First Class Mail :

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