



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: October 13, 2022
MOAHR Docket No.: 22-003949
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 October 5, 2022, from Detroit, Michigan. Petitioner appeared for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by April Sprague, Hearing Facilitator.

ISSUE

Did the Department properly deny Petitioner's application for Food Assistance Program (FAP) 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 or around ██████████ 2022, Petitioner submitted an application requesting FAP benefits. On the application, Petitioner reported that she is employed with ██████████ and is paid once every two weeks, that she is self-employed as a business owner/operator and receives monthly income of ██████████ and that that she receives child support.
2. The Department asserted that during an application interview with the Department on or around August 19, 2022, Petitioner reported self-employment earnings as a tarot card reader of ██████████ monthly. Petitioner asserted that she reported that she owns a company which sells crystals and other items as well as performing tarot card readings.

3. On or around August 19, 2022, the Department sent Petitioner a Verification Checklist (VCL), instructing her to submit proof of her self-employment income by August 29, 2022. Petitioner was informed that she could submit recent business receipts, accounting or other business records, or recent income tax returns. The Department also sent Petitioner Self-Employment Income and Expense Statements DHS-431 for the months of May 2022, June 2022, and July 2022 for completion. (Exhibit A, pp.33-38)
4. On or around August 22, 2022, Petitioner submitted paystubs for her employment income with [REDACTED] one page of a 2021 IRS Form 8995 for her business [REDACTED], and the DHS-431 forms for the months of May 2022, June 2022, and July 2022. Petitioner completed the DHS-431 forms and included business receipts. (Exhibit A, pp. 39-52)
5. The Department determined that the documents submitted by Petitioner were not acceptable as there was conflicting information between that which was provided on the documents and in the application interview.
6. On or around August 30, 2022, the Department sent Petitioner a Notice of Case Action advising her that the [REDACTED], 2022, FAP application was denied because she failed to return verification of self-employment payments. (Exhibit A, pp. 54-55)
7. On or around September 1, 2022, Petitioner requested a hearing disputing the Department's actions. (Exhibit A, pp. 6-9)

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. 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.

In this case, Petitioner disputed the Department's denial of her [REDACTED] 2022, FAP application.

Income eligibility is a condition of receiving FAP benefits. 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 (April 2022), p. 5-6. Acceptable verification sources for wages are outlined in BEM 501. 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. BEM 502 (October 2019), pp. 1-2. Acceptable verification sources for self-employment income are outlined in BEM 502.

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 (January 2022), p.1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. Although the client must obtain the required verification, the Department must assist if a client needs and requests help. If neither the client nor the Department can obtain the verification despite a reasonable effort, the Department is to use the best available information; and if no evidence is available, the Department is to use its best judgment. BAM 130, p. 3. For FAP cases, clients are given 10 calendar days to provide the verifications requested by the Department. Verifications are considered to be timely if received by the date they are due. BAM 130, pp. 7-8. The Department sends a negative action notice when the client indicates a refusal to provide a verification **or** the time period given has elapsed and the client has **not** made a reasonable effort to provide it. BAM 130, pp. 7-8. Additionally, before determining eligibility, the Department is to give the client a reasonable opportunity to resolve any discrepancy between his or her statements and information from another source. BAM 130, p. 9.

At the hearing, the Department representative testified that because during the application interview Petitioner reported that she was self-employed as a tarot card reader, it sent Petitioner the VCL instructing her to provide verification of her self-employment earnings. The Department representative testified that on or around August 22, 2022, the Department received verification from Petitioner including pay stubs, one page of a 2021 IRS Form 8995 for her business [REDACTED] and the DHS-431 forms for all three months of May 2022, June 2022, and July 2022. Petitioner completed the DHS-431 forms and included business receipts. However, when the caseworker was processing verifications, the Department noted that the self-employment income and expense statements had conflicting information, as the forms only identified purchases but no hours completed or income received. The case comments also indicated that it appeared based on the verifications submitted that Petitioner owns a business and only submitted a portion of a tax form for 2021 but did not include a complete Schedule C. The Department testified that the verifications were not acceptable and as a result, issued the [REDACTED] 2022, Notice of Case Action, denying Petitioner's FAP application. The Department representative testified that the information on the self-employment income and expense statements did not appear to match Petitioner's client statement that she was employed as a tarot card reader.

Petitioner disputed the Department's testimony that she reported being self-employed as only a tarot card reader and asserted that she informed the Department during the interview that she owned her own business, that it was a business entity that sold crystals and other items, and that she performs tarot card readings under her company as a service. Petitioner testified that her business, [REDACTED] is an online store and that she completed the self-employment income and expense statements documenting the purchases made by customers during the months of May 2022, June 2022, and July 2022.

Although the acceptable verification sources of income received from an LLC and through self-employment income differ, and while the Department budgets income received from those sources differently, the evidence established that Petitioner made a reasonable effort to provide the requested verifications and did not indicate a refusal to submit verification of income. Furthermore, if the Department determined that the information in the verifications submitted was conflicting with information previously reported, the Department should have given Petitioner an opportunity to resolve those discrepancies.

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 denied Petitioner's [REDACTED] 2022, FAP application due to a failure to return verification of self-employment income

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. Register and reprocess Petitioner's [REDACTED] 2022, FAP application;
2. Issue FAP supplements to Petitioner for any benefits she was eligible to receive but did not from the application date, ongoing, in accordance with Department policy; and
3. Notify Petitioner in writing of its decision.

ZB/ml



Zainab A. Baydoun
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

Janice Collins
Genesee County DHHS Union St District
Office
125 E. Union St 7th Floor
Flint, MI 48502
**MDHHS-Genesee-UnionSt-
Hearings@michigan.gov**

Interested Parties

BSC2
M. Holden
D. Sweeney
MOAHR

Via First Class Mail :

Petitioner

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