



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: December 8, 2022
MOAHR Docket No.: 22-004918
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 November 30, 2022. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearings Facilitator.

ISSUE

Did the Department properly process the decision in Michigan Office of Administrative Hearings and Rules (MOAHR) docket number 22-003449?

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 June 21, 2022, the Department received approximately 143 pages of verifications from Petitioner which were then subdivided into 46 entries in Bridges in the electronic case file. These verifications cover Petitioner's self-employment income and expenses from March, April, and May of 2022. The only expense missing from the verifications according to Petitioner's testimony is the updated lease for her crafting booth.
2. Petitioner's Redetermination month was July 2022, and her Redetermination interview was held on July 1, 2022.
3. On October 12, 2022, Administrative Law Judge Jordan issued a decision in MOAHR docket 22-003449 reversing the Department's closure of Petitioner's FAP case and ordering the Department to recalculate Petitioner's FAP budget effective

August 1, 2022 and only requesting documents that have been confirmed as necessary. The Department was also ordered to recalculate Petitioner's FAP budget using the \$165.00 Standard Medical Deduction (SMD).

4. On October 19, 2022, the Department issued a Notice of Case Action to Petitioner increasing Petitioner's FAP benefit rate based on the addition of the \$165.00 SMD but making no changes in the calculation of her self-employment income.
5. On October 24, 2022, the Department issued another Verification Checklist (VCL) with a due date of November 3, 2022 requesting proofs of self-employment expenses for May and self-employment income and expenses for June.
6. On October 28, 2022, the Department received Petitioner's request for hearing disputing the Department's implementation of the decision in docket number 22-003449.

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 disputes the Department's implementation of the hearing decision in MOAHR docket number 22-003449. In the Department's efforts to implement the decision, the Department correctly added Petitioner's SMD to her FAP budget but failed to redetermine her self-employment income before issuing a Notice of Case Action. After issuing the Notice of Case Action, the Department then sought verification of Petitioner's self-employment expenses for May 2022 and self-employment income and expenses for June 2022. Petitioner asserts that the Department already has everything they need because she submitted it all on [REDACTED] 2022 and it was received by the Department on June 21, 2022.

Per policy, the Department is required to verify self-employment income at Redetermination. BEM 502 (October 2019), p. 6. Self-employment income can be both fluctuating and irregular. BEM 505 (November 2021), p. 2. For both fluctuating and irregular income, the Department is required to use the past 60 or 90 days of history if the past 30 days is not a good indicator of future income and if the fluctuations of the past 60 or 90 days accurately reflect what is expected in the benefit month. BEM 505,

p. 6. In addition, the 60 or 90-day period used can begin up to 60 or 90 days before the interview date or the date the information was requested. BEM 505, p. 7. Finally, Bridges generates redetermination packets to clients three days prior to the negative action cut-off date in the month before the redetermination is due. BAM 210 (April 2022), p. 8.

Petitioner attempted to comply with the Department's requests for verifications with her July 2022 Redetermination by submitting self-employment income and expenses for March, April, and May 2022 on June 21, 2022. Since Petitioner placed the verifications in the mail on June 15, 2022 and they were received by the Department on June 21, 2022, Petitioner's assumption that her submission of the income and expenses from the completed months of March, April, and May 2022 was reasonable. In reviewing policy, since verifications were requested with the Redetermination form, and the Redetermination was due on July 1, 2022 which meant that the Redetermination form itself should have been mailed no later than June 1, 2022, Petitioner complied with policy by submitting verifications for March, April, and May 2022 because effectively verifications were requested on June 1, 2022. Therefore, the 60 or 90-day period would begin effective March 3, 2022 or April 2, 2022 depending on whether 60 or 90 days was being considered to determine Petitioner's self-employment income. The Department's request for additional verifications in June 2022 was unnecessary. Furthermore, Petitioner credibly testified and provided a copy of the table of contents of documents received by the Department on June 21, 2022 that Petitioner has already submitted her income and expense information for May 2022. Per the table of contents, Petitioner's May 2022 income and expense verifications were located on pages 110 through 142 of the submitted packet. Therefore, the Department's request for May expense verification was also unwarranted. The only reason for which the Department should have requested verification of May expenses is if the Department misplaced the verifications previously provided by Petitioner.

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 requested verification of self-employment expenses for May and self-employment income and expenses for June.

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 FAP eligibility effective August 1, 2022 using all available verifications received by the Department on June 21, 2022;

2. Only request verification of Petitioner's self-employment expenses for May 2022 if Petitioner's previously submitted verifications cannot be located by the Department;
3. If otherwise eligible, issue supplements to Petitioner for benefits not previously received if applicable; and,
4. Notify Petitioner in writing of its decision.

AMTM/cc



Amanda M. T. Marler
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 :

Interested Parties

MDHHS-Wayne-19-Hearings
BSC4-HearingDecisions
D. Sweeney
M. Holden
MOAHR

Via-First Class Mail :

Petitioner

[REDACTED]
MI [REDACTED]