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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: April 25, 2023
MOAHR Docket No.: 23-001623
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 via telephone conference line on April 19, 2023. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Danielle Moton, specialist. Peter Chona of Bromberg and Associates initially participated as an Arabic-English translator. Mohammed Assad, Petitioner's son completed the hearing as an Arabic-English translator.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of December 2022, Petitioner received FAP benefits as a member of a group including Petitioner's daughter, ██████████ (hereinafter, "Daughter") and five other members.
2. As of December 2022, Petitioner's FAP benefit period was certified through January 2023.
3. On January 17, 2023, MDHHS mailed Petitioner a Verification Checklist (VCL) requesting proof of 30 days of Daughter's income by January 26, 2023.

4. On January 23, 2023, MDHHS received 30 days of income documents for Daughter.
5. On January 30, 2023, MDHHS terminated Petitioner's FAP eligibility beginning February 2023 due to a failure to verify income.
6. On March 15, 2023, Petitioner requested a hearing to dispute the termination of FAP benefits.
7. On an unspecified date, MDHHS subsequently processed Petitioner's FAP redetermination and determined that Petitioner was ineligible due to excess income of \$[REDACTED].

CONCLUSIONS OF LAW

The 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 the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. FAP policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a termination of FAP benefits. Exhibit A, pp. 3-4. A Notice of Case Action dated January 30, 2023, stated that Petitioner's FAP eligibility was terminated due to a failure to verify unspecified information. Exhibit A, pp. 35-39. MDHHS testified Petitioner specifically failed to verify Daughter's income as part of a redetermination.¹

For all programs, a complete redetermination is required at least every 12 months. BAM 210 (October 2022) p. 3. Bridges, the MDHHS database, automatically sends a DHS-1010, Redetermination, to the client three days prior to the negative action cut-off date in the month before the redetermination is due. *Id.*, p. 8. For FAP benefits, the redetermination process begins when the client files a DHS-1010 or other acceptable substitute form. BAM 210 (January 2018), p. 3. FAP benefits stop at the end of the benefit period unless the redetermination process is completed and a new benefit period is certified. *Id.* If the redetermination packet is not logged in by the last working day of the redetermination month, Bridges automatically closes the benefits and a Notice of Case Action is not generated.² *Id.*, p. 14.

For FAP redeterminations, verifications must be provided by the end of the current benefit period or within 10 days after they are requested, whichever allows more time. *Id.*, p. 17. A VCL should be sent after the redetermination interview for any missing verifications allowing 10 days for their return. *Id.*

¹ MDHHS presented a blank Redetermination dated December 5, 2022, verifying that Petitioner's case was up for redetermination. Exhibit A, pp. 6-12.

² In the present case, a Notice of Case Action was generated.

MDHHS presented a VCL dated January 17, 2023 requesting, among other items, verification of 30 days of Daughter's income by January 26, 2023. Exhibit A, pp. 13-15. MDHHS claimed that Petitioner failed to timely verify Daughter's employment income. However, MDHHS also presented 30 days of wage documents for Daughter received by MDHHS on January 23, 2023. Exhibit A, pp. 16-21. The wage documents directly contradicted the MDHHS claim that Petitioner failed to timely verify Daughter's income.

Given the evidence, MDHHS improperly failed to redetermine Claimant's FAP eligibility due to untimely submitted verification. A remedy ordering MDHHS to reprocess Petitioner's FAP eligibility would be apt. MDHHS testified that the remedy need not be ordered because "subsequent processing" resulted in Petitioner being ineligible for FAP benefits due to excess income.³

FAP eligibility based on income requires calculating a benefit group's net income. BEM 556 outlines the factors and calculations required to determine a client's net income. FAP net income factors include group size, countable monthly income, and relevant monthly expenses. MDHHS presented a budget listing all FAP net income calculations and a calculated income of \$[REDACTED] for Petitioner's benefit group.⁴ Exhibit A, pp. 26-27. During the hearing, only the benefit group's income was discussed.

MDHHS testified that \$[REDACTED] of the group's income derived from Daughter's wages from December 2022. MDHHS testified that Daughter received the following weekly gross wages beginning December 6: \$[REDACTED], \$[REDACTED], \$[REDACTED], and \$[REDACTED]. For FAP benefits, MDHHS generally counts gross wages.⁵ BEM 501 (July 2017), p. 7. MDHHS converts stable or fluctuating weekly income to a monthly amount by multiplying the average income by 4.3. *Id.*, p. 8. Multiplying Daughter's average weekly gross wages by 4.3 results in a monthly employment income of \$[REDACTED] (dropping cents). Thus, MDHHS properly calculated Daughter's income.⁶

MDHHS testified that it calculated Petitioner's self-employment income to be \$[REDACTED] based on income received from October through December 2022. MDHHS testified that Petitioner had two self-employment sources of income: from driving and food delivery. MDHHS testified that Petitioner earned \$[REDACTED] in food delivery income from October

³ MDHHS allows for "subsequent processing" when redeterminations are completed within 30 days of the benefit period expiring. BAM 210 (October 2022) p. 22. For example, if a client untimely submits verifications 10 days after the benefit period expires, MDHHS is to reregister the redetermination and process from the date that verifications are received. *Id.*, pp. 22-23.

⁴ MDHHS did not clarify whether Petitioner's benefit group had excess net or gross income. It is presumed that Petitioner's FAP eligibility ended due to excess net income based on a net income budget being presented.

⁵ Exceptions to using gross wages include the following: earned income tax credits, flexible benefits, striker earnings, student disregards, and census worker earnings. BEM 501 (July 2017), p. 7. None of these exceptions apply to the present case.

⁶ Petitioner testified that Daughter has her own expenses and implied her income should not be counted. Whether Daughter has her own expenses is irrelevant to whether her income is countable.

through December 2022.⁷ Driver income documents verified that Petitioner received the following self-employment income after expenses: \$[REDACTED], \$[REDACTED], and \$[REDACTED]. Exhibit A, pp. 22-24. MDHHS testimony acknowledged it erred by failing to consider Petitioner's self-employment wages following expenses.

Given the evidence, MDHHS failed to establish it properly terminated Petitioner's FAP eligibility due to excess income. As a remedy, MDHHS will be ordered to reprocess Petitioner's FAP redetermination.⁸

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FAP eligibility beginning February 2023. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Process Petitioner's redetermination subject to the following findings:
 - a. MDHHS failed to establish that Petitioner untimely verified Daughter's income;
 - b. MDHHS failed to establish it properly calculated Petitioner's self-employment income; and
- (2) Issue notice and supplements, if any, in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/mp



Christian Gardocki
Administrative Law Judge

⁷ MDHHS specifically stated that Petitioner earned \$[REDACTED] in October 2022, \$[REDACTED] in November 2022, and \$[REDACTED] in December 2022.

⁸ Petitioner should be aware that benefit reprocessing does not guarantee a result of benefit eligibility.

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
MDHHS-Wayne-17-hearings
D. Sweeney
M. Holden
MOAHR
BSC4

Via-First Class Mail :

Petitioner

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