



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

Date Mailed: March 14, 2024
MOAHR Docket No.: 24-001487
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 March 7, 2024. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Tamara Golson, Assistance Payments Worker.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case effective April 1, 2024?

Did the Department properly determine Petitioner's eligibility for State Emergency Relief (SER) assistance?

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 for a certified group size of three (3). Petitioner's group was comprised of herself and her two children. (Exhibit A, pp. 10, 26 – 27). Petitioner's FAP benefits were last certified on December 23, 2023, effective January 1, 2024 ongoing. (Exhibit A, p. 33).
2. On [REDACTED] 2024, Petitioner submitted an application for SER assistance to the Department, requesting assistance with her electric bill. (Exhibit A, pp. 9 – 15).
3. During an interview conducted by the Department in a case opened on Petitioner's aunt's (Aunt) behalf, Petitioner disclosed to the Department that Aunt had been

homeless and was now living with Petitioner and her children and paying Petitioner rent.

4. On January 29, 2024, the Department sent Petitioner a Verification Checklist (VCL) for her FAP benefits and requested proof of her last thirty (30) days of income. The VCL stated the due date for the requested proof was February 8, 2024. (Exhibit A, p. 16).
5. On January 29, 2024, the Department sent Petitioner a second VCL for her SER application and requested proof of her last thirty (30) days of income. The VCL stated the due date for the requested proof was February 5, 2024. (Exhibit B, p. 1).
6. On February 1, 2024, the Department sent Petitioner a VCL for her SER application and requested proof of rental income received from Aunt. The VCL stated the proof could be one of the following: recent business receipts to date, recent accounting or other business records to date, current lease or rental agreement, recent rent receipt, or written statement from renter. The VCL stated the due date for the requested proof was February 8, 2024. (Exhibit A, p. 19).
7. On February 6, 2024, the Department sent Petitioner a State Emergency Relief Decision Notice (Denial) denying Petitioner's application based on failure to return verification of earned income payment and room and board payments. (Exhibit A, pp. 21 – 22).
8. On February 7, 2024, Petitioner provided verification of her income to the Department. (Exhibit A, p. 1).
9. On February 8, 2024, Petitioner provided a recent rent receipt to the Department. (Exhibit A, p. 1).
10. On February 12, 2024, the Department received Petitioner's request for hearing, disputing reduction of her FAP benefits and denial of her SER application. (Exhibit A, p. 4).
11. On February 17, 2024, the Department sent Petitioner a Notice of Case Action (NOCA) closing Petitioner's FAP case effective April 1, 2024 based on failure to return verification of Petitioner's income. (Exhibit A, pp. 26 – 27).

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).

Petitioner requested a hearing to dispute closure of her FAP benefits and denial of her SER application. (Exhibit A, p. 4). The Department closed Petitioner's FAP benefits, alleging Petitioner failed to provide proof of earned income, and denied Petitioner's SER application, alleging Petitioner failed to provide proof of earned income and proof of rental income. (Exhibit A, pp. 5 – 7, 26 – 27).

In this case, Petitioner applied for SER on [REDACTED], 2024, for assistance to pay her electric bill. (Exhibit A, pp. 9 – 15). Following Petitioner's application for SER, the Department testified that Petitioner assisted Aunt, as her Authorized Hearing Representative (AHR), in applying for services from the Department. The Department further testified that in conjunction with Aunt's application for services, Petitioner completed an interview with the Department and during that interview Petitioner disclosed that Aunt was paying Petitioner rent.

FAP

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.

The Department explained that, in connection with providing assistance with Aunt's application for benefits, Petitioner disclosed to the Department that Aunt paid Petitioner rent. Once the Department is aware of a change in income that will affect eligibility or benefit level, the Department must complete a new budget. BEM 505 (October 2023), p. 10. Changes in circumstances may be discovered through a report by Petitioner, computer tape matches, quality assurance reviews, or other means. BAM 220 (July 2023), p. 1.

The Department is required to obtain verification when it is required by policy or information is unclear or incomplete. BAM 130 (October 2023), p. 1. Verification is usually required at application and when a reported change affects eligibility or benefit level. BAM 130, p. 1; BEM 500 (April 2022), pp. 13 – 14; BEM 505, p. 14. To obtain verification, the Department must tell the client what verification is required, how to obtain it and the due date. BAM 130, p. 3. The client must obtain the requested verification, but the local office must assist the client if they need and request help, and if neither the client nor the local office can obtain verification despite a reasonable effort, the Department must use the best available information. BAM 130, p. 3. Verifications may include client statements, electronic verification from a reliable source, such as Equifax/Work Number, or a consolidated inquiry. BEM 500, p. 15. If no evidence is available, the Department must use its best judgement. BAM 130, p. 3.

The Department allows the client ten calendar days to provide the requested verification and verifications are considered timely if received by the date that they are due. BAM 130, p. 7. If verifications are not received, the Department sends a negative action notice when the client indicates a refusal to provide the requested verification, or the time period given on the VCL has lapsed and the client has not made a reasonable effort to provide it. BAM 130, p. 7.

Here, Petitioner was an ongoing recipient of FAP and had last been certified for benefits on December 23, 2023, for the certification period of January 1, 2024 ongoing. Once the Department became aware of Petitioner was receiving rental income from Aunt, it was required to complete a new budget and required to obtain verification of Petitioner's rental income to do so. However, the Department generated a VCL, specifically regarding Petitioner's FAP benefits, on January 29, 2024, requesting verification of Petitioner's employment income rather than rental income. (Exhibit A, p. 16). This VCL was due February 8, 2024. (Exhibit A, p. 16). The Department did not offer any testimony or evidence in support of why proof of Petitioner's earned income was requested from Petitioner at this time, nor did it offer testimony or evidence of a VCL being sent to Petitioner requesting verification of her rental income for purposes of her FAP case.

Notwithstanding the foregoing, Petitioner testified, and the Department confirmed, that Petitioner provided proof of her earned income to the Department on February 7, 2024, and proof of her rental income on February 8, 2024. (Exhibit A, pp. 24 – 25, 30). Despite having received the requested verification, on February 17, 2024, the Department notified Petitioner that her case would close effective April 1, 2024 for failure to return verification of earned income. (Exhibit A, pp. 26 – 27).

At the hearing, the Department testified that Petitioner's FAP case was closed in error and has since been reopened (Exhibit A, p. 31) and is active, however that it is currently pending for verification of Petitioner's rental income. (Exhibit A, p. 33). However, Petitioner submitted verification of that income to the Department on February 8, 2024, and the Department did not produce any proof that it has requested such verification from Petitioner in her FAP case. (Exhibit A, pp. 30, 33). Policy requires that when verifications are required, the Department must notify the applicant what is required, how to obtain it, and the due date. BAM 130 (October 2023), pp. 3 – 4. Therefore, it is found 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 effective April 1, 2024.

SER

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

Petitioner applied for SER, on [REDACTED] 2024, for assistance to pay her electric bill. (Exhibit A, pp. 9 – 15). The SER program provides assistance to applicants to secure or maintain safe, decent, affordable housing and other essential needs when an emergency situation arises. ERM 101 (March 2023), p. 1. SER assists individuals with overall housing issues, avoiding interruption of utilities due to shut off notices, non-energy home repairs, other housing-related emergencies, and burial expenses. See ERM 100 (October 2023), p. 1 – 3; ERM 209 (October 2023), pp. 1 – 5. SER assistance related to an individual's heat and electricity are considered energy services. ERM 301 (January 2024), p. 1.

As part of the application process, the Department must verify and budget all non-excluded gross income that is expected to be received during the countable income period. ERM 206 (October 2023), p. 1. The countable income period is the 30-day period starting on the day the Department receives the signed SER application. ERM 206, p. 1. Earned income may be verified through paystubs, written statements of the employer, a completed Verification of Employment (DHS-38), or other means. ERM 206, p. 7. Additionally, for SER assistance with energy services, income verification used in the current eligibility determination for any other Department program may be used if available. ERM 206, p. 6.

The Department testified that it sent a VCL to Petitioner, specifically regarding the SER application, on January 29, 2024, requesting proof of Petitioner's earned income by February 5, 2024. (Exhibit B, pp. 1 – 2). The due date and Department program were the only differences between the two VCLs sent to Petitioner on January 29, 2024. (Exhibit A, p. 16; Exhibit B, p. 1).

The Department further testified that it sent a second VCL regarding her SER application to Petitioner on February 1, 2024, requesting proof of Petitioner's rental income from Aunt. (Exhibit A, p. 19). The VCL stated the proof could be one of the following: recent business receipts to date, recent accounting or other business records to date, current lease or rental agreement, recent rent receipt, or written statement from renter, and was due February 8, 2024. (Exhibit A, p. 19). Petitioner provided a rent receipt for January 2024 to the Department on February 8, 2024. (Exhibit A, pp. 1, 30).

The Department issued the Denial on the SER application on February 6, 2024, stating that SER was denied due to Petitioner's failure to provide proof of her earned income and proof of rental payments. (Exhibit A, pp. 21 – 22). While Petitioner acknowledged that she did not provide proof of her earned income to the Department until February 7, 2024, Petitioner was an ongoing recipient of FAP benefits, and had most recently completed her certification process on December 26, 2023, and was in a current eligibility period. (Exhibit A, p. 33). Therefore, as ERM 206 provides that for SER assistance with energy services, income verification used in the current eligibility determination for any other Department program may be used if available, the Department should have used Petitioner's income verification from her FAP case to determine her eligibility for SER assistance. ERM 206, p. 6. Further, pursuant to the VCL sent to Petitioner on February 1, 2024, verification of Petitioner's rental income

was not due until February 8, 2024 and therefore her SER application could not be denied any earlier than that date due to a lack of rental income verification and Petitioner timely provided a rent receipt for January 2024 to the Department on February 8, 2024. (Exhibit A, pp. 19, 30).

Although the Department testified that the proof of rental income Petitioner provided is insufficient because it is not signed, the SER VCL states that a recent rent receipt is adequate verification of rent. Clients must be informed of all verifications that are required and where to return verifications. ERM 103. Because the SER VCL did not specify that a signed receipt was required, the Department erred when it denied the SER application on the basis that the verification was inadequate.

Therefore, based on Petitioner's current certification for FAP at the time she applied for SER assistance, and that verification of her rental income was not due until February 8, 2024, the Department did not act in accordance with Department policy when it denied Petitioner's SER application.

In summary, 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 effective April 1, 2024. The Administrative Law Judge further finds that the Department did not act in accordance with Department policy when it denied Petitioner's SER application.

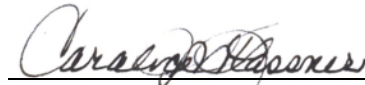
DECISION AND ORDER

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. Reinstate Petitioner's FAP case effective April 1, 2024 ongoing;
2. Issue Petitioner supplemental payment for any FAP benefits she was eligible to receive, but did not, from April 1, 2024 ongoing;
3. Reregister and process Petitioner's [REDACTED] 2024, SER Application for assistance with heat and electric services to determine her eligibility for SER;
4. If determined eligible for SER, supplement Petitioner and/or her SER provider for any SER benefits that she was eligible to receive but did not from the application date, ongoing; and
5. Notify Petitioner in writing of its decision.

CML/pt



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:

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Interested Parties

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