



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

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Date Mailed: October 4, 2024
MOAHR Docket No.: 24-009663
Agency No.: ██████████
Petitioner: ██████████ ██████████

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 September 24, 2024, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Hearing Facilitator Hannah Czechowski. Department Exhibit 1, pp. 1-156 was received and admitted.

ISSUE

Did the Department properly close Petitioner’s Food Assistance Program (FAP) case due to excess 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. On May █ 2024, Petitioner submitted redetermination paperwork.
2. On June █ 2024, a Verification Checklist was sent to Petitioner requesting verification of rental income and employment.
3. On July █ 2024, Notice of Case Action was sent to Petitioner informing her that FAP was closing for failing to submit verification of loss of employment and earned income payment.
4. On July █ 2024, a Verification Checklist was issued to Petitioner requesting verification of room and board income.

5. On July █ 2024, Petitioner provided a statement with her rental properties listed and the amount of rent she received. (Ex. 1, p.36)
6. On August █ 2024, a Verification Checklist was sent to Petitioner requesting self-employment income and room and board income information.
7. On August █ 2024, a FEE investigation report was issued providing information regarding the rental properties Petitioner owns and what she self-reports for rental income received. (Ex. 1, pp. 40-42)
8. On August █ 2024, Notice of Case Action was sent to Petitioner informing her that she was approved for FAP for July 2024 for \$█ and FAP would close August 1, 2024 due to excess income.
9. On August █ 2024, a Health Care Coverage Determination Notice was sent to Petitioner informing her that MA was closing due to excess income. Petitioner was found to have \$█ in annual income based on the gross rental income she receives and gross self-employment income.
10. On August █ 2024, Petitioner requested hearing disputing the closure of FAP.
11. On August 22, 2024, Petitioner submitted a profit/loss statement for her rental properties. (Ex. 1, p.150)

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

All Programs

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. Obtain verification when:

- Required by policy. Bridges Eligibility Manual (BEM) items specify which factors and under what circumstances verification is required.
- Required as a local office option. The requirement must be applied the same for every client. Local requirements may not be imposed for Medicaid Assistance (MA).
- Information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. The questionable information might be from the client or a third party. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130

All Programs except MAGI Medicaid

Some types of rental/room and board income are counted as unearned income and some as earned income or self-employment. Bridges will determine both of the following:

- Countable income (allowing expenses when appropriate).
- If the income is counted as unearned, earned or self employment. BEM 504

Other Rental Income

Other rental income means any rental income that is not:

- Farm land rental.
- In-home rental.
- Room and board. Example: Individual rents his non-homestead house to another individual. Bridges determines whether to treat the rent as earned or unearned income based on the time the landlord actively engages in managing the rental property:

- Under 20 hours per week- unearned income.
- 20 or more hours per week- earned income.

Active management includes, but is not limited to, the following:

- Advertising.
- Showings to prospective renters.
- Accounting activities.
- Inspections.
- Cleaning, repairing, and redecorating. Accept the landlord's statement of the time spent actively managing the rental property unless the estimate is questionable. If necessary, verify the time estimate by contacting individuals who would be reasonably expected to know (example: the renter concerning inspections and repairs). Bridges counts the gross rent payment minus allowable expenses as income. Bridges allows expenses that are the higher of:

- 65 percent of the rental payment.
- Actual rental expenses if the landlord chooses to report and verify the expenses. BEM 504

ALLOWABLE RENTAL EXPENSES

All Programs

Bridges uses the standard percentage for expenses if either of the following:

- The landlord chooses not to report actual expenses.
- The landlord does not verify reported expenses exceeding the standard percentage. When a landlord chooses to report actual expenses for in-home rental, room and board, or other rental income, Bridges uses the following to determine what expenses are allowable and should be entered in Bridges. Expenses must be the landlord's obligation and must solely be expenses of the rental property to be allowed. Allowable expenses may include: Real estate insurance.
- Repairs.
- Heat.
- Utilities.
- Property taxes.
- Lawn care.
- Snow removal.
- Furniture.
- Advertising for renters.
- Interest and escrow portions of mortgage or land contract payment. Bridges will not deduct expenses exceeding the gross rental income (a loss) from other types of income. BEM 504

VERIFICATION SOURCES

All Programs

Property Expenses • Mortgage or land contract. • Bills or receipts. Rental and Room and Board Income • Written statement from the boarder/roomer. • Accounting or other business records. • Lease or contract. • Rent receipt book. Rental/Room and Board Expenses • Receipts. BEM 504

In this case, Petitioner has other rental income according to the definition in BEM 504. Rental expense verifications were never requested from Petitioner. Rental expense information is needed to determine whether Petitioner should be given expenses of 65% of the rental payment or actual expenses. Petitioner was not given any rental expense in violation of BEM 504. In addition, Petitioner was never asked how many hours per week she spends managing her rental properties, that information is needed to determine whether Petitioner's rental income is earned or unearned. Petitioner was also not requested to provide expense information regarding her self-employment income from her real estate work.

The Department did not have the required information to determine Petitioner's net rental income and net self employment income and the Department never requested the required information.

Petitioner did submit a profit/loss statement and her tax returns but those are not sufficient to verify rental expense because they include some expenses that are not allowed under BEM 504. Petitioner should be issued a verification checklist requesting allowable rental expense and self-employment expense information and how many hours she spends managing her rental properties.

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 and MA cases due to excess 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. Reinstate Petitioner's FAP and MA cases going back to the date of closure.
2. Award Petitioner a supplement for any missed benefits.
3. Issue a verification checklist requesting verification of allowable rental expense and self employment expenses and how many hours Petitioner spends per week managing her rental properties.



AM/dm

Aaron McClintic
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
Hannah Czechowski
Genesee County DHHS Clio Rd Dist.
**MDHHS-Genesee-Clio-
Hearings@michigan.gov**

HoldenM

DensonSogbakaN

BSC2HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner

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