

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-016392
Issue No.: 3001
Agency Case No.: [REDACTED]
Hearing Date: October 28, 2015
County: WAYNE-DISTRICT 15

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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; 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 28, 2015, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department was represented by [REDACTED], Family Independence Manager; and [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits effective August 1, 2015?

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.
2. On [REDACTED], Petitioner submitted a redetermination in which he indicated that he is 42-years-old, he attends community college, he is not attending full-time, and he is not receiving work study. See Exhibit B, pp. 1-6.
3. On [REDACTED], the Department conducted a FAP redetermination telephone interview in which Petitioner reported that he is currently enrolled in community college and that he is currently unemployed. See Exhibit A, p. 1.

4. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits closed effective [REDACTED], ongoing, because he was not an eligible student. See Exhibit B, pp. 7-8.
5. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. See Exhibit A, pp. 2-3.

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.

For FAP cases, a person enrolled in a post-secondary education program may be in student status. BEM 245 (July 2014), p. 1. A person in student status must meet certain criteria in order to be eligible for assistance. BEM 245, p. 1.

For FAP cases, a person is in student status if he is:

- Age 18 through 49 and
- Enrolled half-time or more in a:
 - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.
 - Regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required.

BEM 245, p. 3.

In order for a person in student status to be eligible, they must meet one of the criteria's listed in BEM 245. BEM 245, pp. 3-5. Petitioner argued the following three possible requirements in order for him to be student status eligible:

* * *

- Enrolled in an institution of higher education as a result of participation in:
 - A JTPA program.

* * *

- Physically or mentally unfit for employment.

* * *

- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.

BEM 245, p. 4.

In the present case, it was not disputed that Petitioner is between the ages of 18 through 49, and he is enrolled half-time or more in a post-secondary education program. However, the issue in this case is whether Petitioner meets any of the criteria in BEM 245. BEM 245, pp. 3-5.

First, Petitioner appeared to argue that he was enrolled in an institution of higher education as a result of participation in a JTPA (Job Training Partnership Act) program. However, Petitioner's evidence failed to indicate if he was enrolled in a JTPA program. See Exhibit 1, pp. 1-2.

Second, Petitioner argued that he was possibly physically or mentally unfit for employment and that he has notified the Department of his medical conditions.

Verification sources for physically or mentally unfit for employment include the following:

- Award letter or other verification of eligibility for Retirement, Survivors, and Disability Insurance (RSDI) or Supplemental Security Income (SSI) on the basis of disability.
- Award letter or other verification of eligibility for disability benefits issued by government or private sources.
- Statement from an M.D. or D.O.
- Statement from a psychologist.

BEM 245, p. 10.

Petitioner failed to provide any evidence indicating that he is physically or mentally unfit for employment.

Third, Petitioner's main argument was that he was a participant in an on-the-job training program conducted by the [REDACTED] (hereinafter referred to as [REDACTED]). Petitioner provided testimony and evidence that he received the 2014 [REDACTED]. See Exhibit 1, p. 2 (Letter dated [REDACTED], from [REDACTED] confirming Petitioner's scholarship). Along with the scholarship requirements, Petitioner testified that he had to participate in training programs conducted by Marathon at the community college before he could become employable with them. Petitioner testified

that he is not paid by [REDACTED] until he completes these courses. Moreover, Petitioner testified that this on-the-job training consisted of classes that he took at the community college in which [REDACTED] paid for the programs of study. To support Petitioner's claim, he provided an undated letter from his community college that stated Petitioner was selected to be a [REDACTED] and that [REDACTED] pays for all [REDACTED] program of study, as well as providing on-site training in the process technology industry. See Exhibit 1, p. 1.

In response, the Department indicated that its interpretation of on-the-job training means you are being trained and paid by the employer. The Department argues that Petitioner did not meet the criteria of being a participant in an on-the-job training program.

Based on the above information, the undersigned finds Petitioner did not meet the requirement of being a participant in an on-the-job training program in accordance with Department policy. See BEM 245, p. 4. Policy specifically states a person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the *employer*. BEM 245, p. 4 (emphasis added). The word "employer" is emphasized in this case because the undersigned interprets this policy to mean there has to be an employer-employee relationship present in order for Petitioner to meet this requirement. Petitioner was not an employee of [REDACTED]. Yes, [REDACTED] did provide, at its own cost, on-site training for the Petitioner as well as a scholarship. See Exhibit 1, p. 1. However, this does not equate to Petitioner being an employee for [REDACTED], which is a requirement for him being a participant in an on-the-job training program.

Based on the foregoing information and evidence, the Department properly closed Petitioner's FAP benefits effective [REDACTED], in accordance with Department policy. See BEM 245, pp. 1-11. It should be noted that the undersigned also reviewed the additional criterion listed in BEM 245, pp. 3-5, which could also make Petitioner potentially student status eligible. However, the undersigned determined that Petitioner did not meet the other criterion listed. BEM 245, pp. 3-5.

DECISION AND ORDER

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 acted in accordance with Department policy when it closed Petitioner's FAP benefits effective August 1, 2015.

Accordingly, the Department's FAP decision is **AFFIRMED**.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **10/29/2015**

Date Mailed: **10/29/2015**

EF / hw

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

