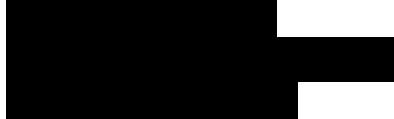


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:



MAHS Reg. No.: 15-019785
Issue No.: 3001
Agency Case No.: [REDACTED]
Hearing Date: December 09, 2015
County: Wayne (76) Gratiot/7 Mile

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 December 9, 2015, from Detroit, Michigan. The Petitioner was represented by the Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED], Assistance Payments Worker; and [REDACTED], Assistance Payments Supervisor/ Hearing Facilitator.

ISSUE

Did the Department properly close the 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. The Petitioner applied for FAP benefits on July 6, 2015; and at the time of the application, she was residing her mother's home. The Petitioner was [REDACTED] years old at the time she applied on behalf of herself and her son. Exhibit 5.
2. The Petitioner did not list her mother as living in the home on the application and listed her mother, [REDACTED], as an absent parent. Exhibit 5.
3. The Department sent the Petitioner a Verification Checklist (VCL) dated July 6, 2015, with a due date of July 16, 2015, requesting earnings information from the Petitioner.

4. The Department issued a Notice of Case Action dated July 28, 2015, approving the Petitioner for FAP benefits in the amount of \$ [REDACTED] per month effective July 6, 2015, for a household of two (2). The Department included \$ [REDACTED] in earned income for a household size of three (3) and included Petitioner's mother in the FAP group. The Petitioner's mother did not have an open FAP case at the time. Exhibit 7.
5. The Petitioner's mother owns the home where the Petitioner resides. Exhibit 3.
6. The Department had placed the Petitioner's mother in the FAP group and in the home. The Department made a processing error and placed Petitioner's mother on alien status. When corrected and disqualification removed, Petitioner's mother's income was included in the FAP group income. The Petitioner's mother did not have an open FAP case at the time.
7. On October 9, 2015, the Department closed the Petitioner's FAP case due effective November 1, 2015, due to excess income and gross income exceeding the income limit of \$ [REDACTED]. The Department did not update the Petitioner's mother's income at the time of the closure, and also relied on White Pages information to determine if the Petitioner's mother resided with Petitioner. Exhibit 8.
8. The Department included Petitioner's mother's income in the FAP group income but did not verify the income. The Department used the Work Number to verify income. The net income was \$ [REDACTED]. The Petitioner's income was about \$ [REDACTED] monthly.
9. The Petitioner requested a hearing on October 15, 2015, protesting the closure of her FAP case.

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, the Department closed the Petitioner's FAP case effective November 1, 2015, due to gross income exceeding the gross income limit. The Department

erroneously excluded income of the Petitioner's mother, which it did not update, because she owns the home where the Petitioner lives. At the time of her FAP application of July 7, 2015, the Petitioner was [REDACTED] years old. Exhibit 5. The Petitioner's application listed the Petitioner's mother as an absent parent. At the hearing, the Petitioner testified that her mother does not stay in the home as she takes care of her brother and is back and forth from [REDACTED], and [REDACTED]. The Petitioner's mother lives in the [REDACTED], home from time to time. The Petitioner does not pay rent.

The Department used Google White Pages information to show that the Petitioner's mother was listed in White Pages as living in [REDACTED]. The White Pages lists [REDACTED] [REDACTED], as a prior address. The Petitioner's mother has a brother living in [REDACTED] who she takes care of. At the time of the FAP application, the Petitioner's mother lived in the house based upon the Petitioner's testimony. The Petitioner testified that her mother lives in the house and had lived there up until two months prior to the hearing. The Petitioner's mother pays the utilities and taxes. The Petitioner does not pay rent. The Department when determining Petitioner's income also included one high paystub when calculating the Petitioner's income, which should not have been included ([REDACTED], \$ [REDACTED] and did not update through verification the Petitioner's mother's income to determine group income, but instead, used income from 2012. The Department did not meet its burden to demonstrate that it correctly calculated the income for the FAP budget. The Petitioner's mother paid the heat and utility, but no expenses were listed in the application. The Petitioner testified that her mother lives in the home for three or four days per month currently. No verification was sought from the Petitioner's mother. The Petitioner never reported to the Department that her mother moved out of the home; and thus, the Department had no notice that the Petitioner was the only person living in the home. The Department did not properly verify the information for the closure.

BEM 212 is used to determine FAP group compositions and provides that the Department consider the following to determine the FAP group:

Food Assistance Program group composition is established by determining all of the following:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately.
4. Whether the person(s) resides in an eligible living situation; see **LIVING SITUATIONS** in this item.

RELATIONSHIPS

The relationship(s) of the people who live together affects whether they must be included or excluded from the group.

First, determine if they **must** be included in the group. If they are **not** mandatory group members, then determine if they purchase and prepare food together or separately. BEM212 (October 1, 2015) p. 1.

Children include natural, step and adopted children.

Parents and their children **under** 22 years of age who live together **must** be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group.

Living with means sharing a home where family members usually sleep and share **any** common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share **only** an access area such as an entrance or hallway or non-living area such as a laundry room are **not** considered living together. BEM 212. p. 3

Temporary Absence

A person who is temporarily absent from the group is considered living with the group.

A person's absence is temporary if all of the following are true:

- The person's location is known.
- The person lived with the group before an absence (newborns are considered to have lived with the group).
- There is a definite plan for return.
- The absence has lasted or is expected to last 30 days or less. BEM 212, p. 3

Verify group composition factors if the information given is questionable. Such factors might include boarder status, age or senior members, and inability to purchase and prepare meals separately. BEM 212, p. 10

In this case, the Department conceded error on several issues, including finding the Petitioner's mother disqualified due to alien status, failure to verify group composition, and failure to verify the Petitioner's mother's income based upon old information and request verification of where the Petitioner's mother was living. In addition, the Petitioner did not properly notify the Department that at the time of the application her mother was not living in the household or had left the household. The analysis by the

Department, notwithstanding the Petitioner's omission regarding her mother living in the house, was inadequate; and thus, the Department did not meet its burden to demonstrate that it properly closed the Petitioner's FAP case.

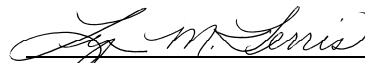
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it when it closed the Petitioner's FAP case.

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. The Department shall reinstate the Petitioner's FAP case and determine eligibility.
2. The Department shall supplement the Petitioner's FAP benefits for FAP benefits, if any, the Petitioner was otherwise entitled to receive in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **12/16/2015**

LMF/jaf

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:

