

**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.: 15-020917
Issue No.: 3001, 2000
Agency Case No.: [REDACTED]
Hearing Date: January 04, 2016
County: MACOMB-DISTRICT
20 (WARREN)

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, an in person hearing was held on January 4, 2015, from Detroit, Michigan. The Petitioner was represented by the Petitioner. An interpreter, [REDACTED], appeared on behalf of the Petitioner. The Interpreter also served as the Petitioner's Authorized Hearing Representative (AHR). The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly deny the Petitioner's Food Assistance Program (FAP) application?

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 September 10, 2015. The Petitioner listed three group members in the application. Exhibit B.
2. The Petitioner also applied for FAP on November 9, 2015. The application listed three members seeking benefits: the Petitioner, her husband [REDACTED] and her daughter [REDACTED] Exhibit C.

3. The Petitioner has a FAP group of three members. On August 30, 2015, her youngest son (██████) moved out of the home. The Petitioner's other older son (██████) does not purchase or prepare meals with the family.
4. The Petitioner has three FAP group members in her FAP group, the Petitioner, her husband (██████) and her daughter Veronica.
5. An OIG investigation was conducted and concluded all three of Petitioner's children are living in the home and purchase and prepare meals together. Exhibit A.
6. The Department issued a Notice of Case Action on October 12, 2015, effective November 1, 2015, which closed the Petitioner's FAP due to group income being over the income limit. Exhibit B.
7. At the hearing, the Petitioner indicated that she no longer needed a hearing regarding her daughter's Medical Assistance (MA) and withdrew the hearing request on the record.
8. The Petitioner filed a request for hearing on November 9, 2015. The Petitioner also filed a new FAP application on November 9, 2015

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 excess income. The Department included income from the Petitioner's son (██████) who Petitioner credibly testified, left the home to live elsewhere on August 30, 2015, and income from an older son, who the Petitioner credibly testified, who does not purchase and prepare food with the family. The case was closed after an OIG investigation. The OIG investigator making the findings about persons living in the home interviewed the Petitioner, but the date was not clear from the report, but occurred sometime in September 2015 at her home. The Petitioner does not speak English well and required an interpreter at the hearing. The OIG based its determination on the OIG report, which concluded that the Petitioner's husband (██████) (██████) her oldest son, and (██████) her youngest son, all lived in the home and determined the group of three

persons' income was roughly \$ [REDACTED]. The Petitioner did indicate in a July 2015 Semi Annual review that all children were in the home. The report concludes "I believe all children remain in the home." The OIG ran a Lexis Nexus, Employment, Work number and SOS and EBT on all adults. The Lexis Nexus search listed all adults with a current address on [REDACTED], where the Petitioner resides. The report notes that the Subject's (Petitioner's) English was poor but understood the Agent. After the interview, the Petitioner's AHR and her interpreter called the Agent and left a voice mail. There is no indication that the AHR's/interpreter's call was returned. The Department did not present any witnesses, and the OIG Agent did not appear.

At the hearing the Petitioner testified under oath that her oldest son [REDACTED] was living in the home; and [REDACTED] was not living in the home. The Petitioner testified that her son [REDACTED] leaves home at 9:00 a.m. and returns at 9:00 p.m. and buys his own food. When asked if she knew where [REDACTED] was living, the Petitioner testified that she was not sure; sometimes with her mother, or her sister and other times with friends. This testimony is consistent with her statement to the OIG that stated that she did not know where [REDACTED] was staying. The Agent did not enter the home as the Petitioner was afraid that her dog would jump on the Agent and talked to her from outside the house and only had a brief encounter. Petitioner did indicate that some of her son's clothes were still in the house.

The Petitioner listed her husband and her daughter as living in the home on her September 10, 2015, application. The Petitioner credibly testified that her son [REDACTED] moved out of the home on August 30, 2015. I find the Petitioner's testimony about [REDACTED] not living in the home credible. It is also determined that the Petitioner's testimony about her son [REDACTED] not purchasing and preparing food with the family as credible. The Petitioner advised the Department by her September 10, 2015, application that her son no longer lived in the home. In addition, a subsequent application on November 9, 2015, also listed only three persons seeking FAP benefits. Exhibit B and Exhibit C.

The OIG based its conclusion on the fact that Lexis Nexus lists the addresses of all individuals (husband [REDACTED] and son [REDACTED] as the same as Petitioners. The Lexis Nexus searches were not provided with the report. Nor do these searches establish where her son [REDACTED] is living. The Department did not seek a verification of who was living in the home and whether [REDACTED] purchased and prepared food with the other family members. There is no basis for the OIG and Department's determination that the Petitioner's son [REDACTED] who lives with her, purchases and prepares food with the FAP group. In a conclusory statement, the OIG concluded that "I believe all the children remain in the home." Exhibit A.

The Department presented no evidence of income used to conclude that the Petitioner's income exceeded the income limit and presented no budgets to establish how it determined income.

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

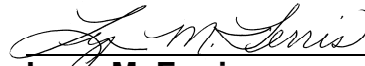
satisfy its burden of showing that it acted in accordance with Department policy when it closed the Petitioner's FAP case due to excess income.

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. The Department shall reinstate the Petitioner's FAP case and determine eligibility based upon a group size of three members.
2. The Department shall issue an FAP supplement to the Petitioner for FAP benefits that Petitioner is otherwise entitled to receive in accordance with Department policy.
3. The Petitioner's request for hearing regarding her daughter's MA closure is hereby withdrawn and is, therefore, DISMISSED.



Lynn M. Ferris

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Mailed: **1/13/2016**

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:

