



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 13, 2016
MAHS Docket No.: 16-006012
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 June 1, 2016, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED] Hearings Facilitator.

ISSUE

Did the Department properly close Respondent's Food Assistance Program (FAP) benefits due to student status ineligibility?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent was an FAP recipient.
2. On January 11, 2016, the Department began a redetermination of Petitioner's FAP benefit case.
3. On April 18, 2016, the Department processed the redetermination and closed Petitioner's FAP benefits based on the Petitioner's full time student status.
4. Petitioner is a full time student.

5. Petitioner earns income by subletting extra rooms in her house through AirBnB, an online service that acts as a middle man to people wishing to sublet extra rooms.
6. This income is earned income.
7. On May 2, 2016, Petitioner requested a hearing.

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.

Generally speaking, a full time student is ineligible for FAP benefits. BEM 245, pg. 4 (2016). However, by meeting certain conditions, a client with student status may retain eligibility for FAP benefits; one such condition is being self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.

Petitioner is an uncontested full time student. However, Petitioner also earns money by subletting rooms through AirBnB, an online service that allows people to easily list and sublet rooms on a temporary basis.

The Department held that income made in this manner constituted unearned income. However, policy found at BEM 504, pg. 2 (2014) states:

“In-home rental is when a landlord rents out part of his own dwelling to another individual.

See Other Rental Income below when a landlord rents out a separate apartment in his dwelling or a separate building.

Bridges counts the gross rent payment minus expenses as earned income from self-employment.

Bridges allows the higher of the following:

- 60% of the rental payment.
- Actual rental expenses if the landlord chooses to claim and verify the expenses.

Expenses must be both of the following:

- Clearly expenses of the rental unit (for example expenses the landlord would not have if not renting out part of his dwelling).
- Included in the list of allowable rental expenses below.”

Per testimony and Department documentation, Petitioner is renting rooms in her own dwelling, and not rooms in a separate apartment or a separate building. As such, the activity in question meets the definition of in-home rental as provided in policy.

Thus, Petitioner’s income should be considered earned income from self-employment.

Therefore, the Department was incorrect when it counted this income as unearned income, and should have applied the self-employment standard to determine whether or not Petitioner met one of the eligibility qualifications regarding student status.

This is not to say that Petitioner is eligible for FAP benefits; the income Petitioner earns from AirBnB may be too little to qualify as a self-employment exception to the student status finding. However, the Department must still consider this income before making such findings regarding Petitioner’s continued eligibility for FAP benefits.

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 benefits due to student status ineligibility.

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. Restore Petitioner's FAP benefits retroactive to the date of negative action.
2. Reprocess the redetermination in question, classifying Petitioner's AirBnB income as earned income from self-employment.

RC/tm



Robert J. Chavez
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

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

DHHS

[REDACTED]

[REDACTED]

[REDACTED]

cc:

[REDACTED]