



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 10, 2016
MAHS Docket No.: 16-005915
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. 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 June 1, 2016, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUE

Did the Department properly deny Petitioner's Food Assistance Program (FAP) application effective April 20, 2016?

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 or around [REDACTED], Petitioner applied for FAP benefits.
2. On [REDACTED], the Department conducted a telephone interview with the Department.
3. Based on the interview, the Department concluded that Petitioner's FAP group size is four (Petitioner, her ex-husband, and their two children). Because they all reside in the same household, the ex-husband's income is considered, which resulted in the denial of FAP benefits due to excess income.

4. On [REDACTED] the Department sent Petitioner a Notice of Case Action notifying her that her FAP application was denied effective [REDACTED] due to her gross income exceeding the limits. See Exhibit A, pp. 11-12.
5. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. See Exhibit A, pp. 18-19.

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 the present case, the Department argues that Petitioner's ex-husband resides in the home with their children, thus, his income is automatically counted, which resulted in the application being denied due to excess income. In response, Petitioner argues that her ex-husband is not a member of the household and his income should not be considered when determining her FAP eligibility.

The Department will help determine who must be included in the Food Assistance Program (FAP) group prior to evaluating the non financial and financial eligibility of everyone in the group. BEM 212 (October 2015), p. 1.

At the hearing, the Department testified that it conducted a telephone interview with the Petitioner on [REDACTED]. The Department testified that Petitioner stated the following during the interview: (i) Petitioner stated she was divorced; (ii) her ex-husband and children's father were living in the home and was not going to move out until July of 2016; (iii) they all purchase and prepare food together; and (iv) her ex-husband makes \$80,000 per year. See Exhibit A, p. 1.

Additionally, the Department testified that the ex-husband's \$80,000 per year corresponds to his consolidated inquiry. See Exhibit A, p. 3. Moreover, the Department was aware that Petitioner was responsible for rent in the amount of \$1,000 as indicated in the shelter budget provided by the Department. See Exhibit A, p. 15. Ultimately, the Department testified that Petitioner's ex-husband was stated to live in the home and his income is automatically counted since he must be on the FAP group with his children;

and his income alone puts the family over the income limit for FAP benefits. See Exhibit A, p. 1.

In response, Petitioner testified as to the following: (i) her group size should be one because she is only seeking FAP benefits for herself; (ii) her husband should not be considered a part of her household as they are divorced; thus, his income should not be considered; (iii) her divorce papers indicated that the ex-husband is only to provide for their two children and not her; (iv) her, her-ex-husband, and their two children do share the same two-story home; (v) she does take care of her children as the husband travels out of the country for work for long periods of time (but does come back to the home at least one time per month); (vi) she pays the ex-husband rent and her portion of the utilities; (vii) she argues that she does not share any common living quarters with the ex-husband because she resides on the lower floor and has her own kitchen, basement, bathroom, etc...; (viii) the ex-husband resides on the upper floor and has his own kitchen, bathroom, etc...; (ix) she indicated that the ex-husband makes \$80,000 per year; and (x) she claims that she purchases and prepares food for herself.

In response to Petitioner's argument, the Department testified that this is a single family home, this is not a two separate dwelling, and they all share a home together as a family.

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.

BEM 212, p. 1.

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. BEM 212, p. 1. First, determine if they must be included in the group. BEM 212, p. 1. If they are not mandatory group members, then determine if they purchase and prepare food together or separately. BEM 212, p. 1.

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. BEM 212, p. 1.

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. BEM 212, p. 3. 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.

Based on the foregoing information, the undersigned finds that the Department properly determined that the ex-husband and their two children all lived together at the time the Department processed Petitioner's eligibility. Yes, Petitioner provides a compelling argument that she does not live with the ex-husband as they don't share any common living quarters together. Nonetheless, the undersigned is reviewing the Department's actions at the time it determined Petitioner's eligibility. During the interview, Petitioner notified the caseworker that the ex-husband and the children live in the same home. See Exhibit A, p. 1. Based on this information, the undersigned finds it reasonable for the Department to conclude at the time that all four members reside in the same household. Moreover, the undersigned finds there is no convincing information at the time for the caseworker to conclude that they share separate living quarters, thus, not considering him a member of the household. See BEM 212, p. 3. Policy states that the purpose of the interview is to explain program requirements to the applicant and to gather information for determining the group's eligibility. BAM 115 (January 2016), p. 16. At the time of the interview and determination of Petitioner's FAP eligibility, the evidence and testimony established that the Department properly determined that the ex-husband and their two children all lived together in the same household in accordance with Department policy. See BAM 115, pp. 16-18 and BEM 212, pp. 1-3. Because the ex-husband and their children lived together with the Petitioner, all four are mandatory group members, which resulted in the FAP group composition being four. See BEM 212, p. 1.

Additionally, because the ex-husband is a mandatory group member, his income is automatically counted. A non-categorically eligible, non-Senior/Disabled/Veteran (SDV) FAP group must have income below the gross and net income limits. BEM 550 (October 2015), p. 1 (the Department indicated this was a non-SDV household). RFT 250 indicates that the FAP income limits for a monthly gross income (130%) limit for a groups size of four is \$2,628. RFT 250 (October 2015), p. 1. The Department presented the ex-husband's consolidated inquiry to calculate his gross monthly income. See BEM 500 (January 2015), pp. 13-14 (the Department verifies all non-excluded income at application and can use available electronic methods (for example consolidated inquiry or SOLQ) to verify income). The Department determined that his yearly income was \$80,040, which Petitioner did not dispute as she indicated he makes approximately \$80,000 a year. See Exhibit A, pp. 1 and 3. The Department divided the yearly income of \$80,040 by 26 pay periods, which resulted in a biweekly pay of \$3,078.46. See Exhibit A, p. 3. The Department then took the biweekly pay period and converted it to a standard monthly amount by multiplying the amounts received every two weeks by 2.15, which resulted in a gross earned income of \$6,618. See Exhibit A, p. 13 and BEM 505 (April 2016), p. 8. Thus, the ex-husband's income alone clearly exceeds the FAP income limit of \$2,628 and the Department acted in accordance with Department policy when it denied her FAP application effective April 20, 2016. See BEM 500, pp. 13-15; BEM 505, p. 8; BEM 550, p. 1; and RFT 250, p. 1. Petitioner can reapply for FAP benefits.

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 denied Petitioner's FAP application effective [REDACTED].

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

EF/hw



Eric J. Feldman

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]

Petitioner

[REDACTED]