



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: November 10, 2016
MAHS Docket No.: 16-014975
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 [REDACTED], from Detroit, Michigan. The Petitioner was represented by himself. An [REDACTED] Translator, [REDACTED] appeared on behalf of the Petitioner. The Department of Health and Human Services (Department) was represented by [REDACTED] Hearing Facilitator.

ISSUE

1. Did the Department properly calculate the Petitioner's Food Assistance Program (FAP) benefits?
2. Did the Department properly remove the Petitioner from his FAP group?

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 was an ongoing recipient of FAP benefits.
2. The Department issued a Notice of Case Action on [REDACTED], decreasing the Petitioner's FAP benefits and removing the Petitioner from the FAP group due to noncompliance with participation in employment and/or self-sufficiency related activities. The Department conceded that the reduction of FAP

benefits and the amount of benefits were incorrect as its determination had been based upon unearned income of \$ [REDACTED] which was in error. Exhibit A.

3. At the hearing, the Department presented an FAP budget, which used the correct income of \$ [REDACTED] but did not restore the Petitioner as an FAP group member.
4. The Petitioner was removed from the FAP group effective [REDACTED], for failure to participate in employment-related activities. Exhibits A and B.
5. The Department used earned income of \$ [REDACTED] from Supplemental Security Income (SSI) received by Petitioner's spouse when it corrected the Petitioner's FAP budget. The date on the budget is [REDACTED], and indicates that FAP benefits should be \$ [REDACTED]. Exhibit B.
6. The Petitioner pays no rent but does pay electric and gas.
7. The Department calculated Petitioner's FAP benefits on the basis of a [REDACTED]-person FAP group.
8. The Petitioner was attending the Partnership.Accountability.Training.Hope. (PATH) Program at the time of the hearing.
9. The Petitioner requested a timely hearing on [REDACTED], protesting the Department's actions.

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 reduced the Petitioner's FAP effective [REDACTED]. Exhibit A. At the hearing, the Department conceded that it used incorrect income when initially calculating the benefits as determined by its Notice of Case Action dated [REDACTED]. Exhibit A. The Department also removed the Petitioner from the FAP group due to alleged non-participation with employment-related activities. Exhibit A. For reasons explained below, the Department has not demonstrated that it properly

removed the Petitioner from his FAP group; and therefore, the FAP budget and FAP benefit amount are determined to be incorrect as the group size reduction is not supported by the evidence presented by the Department.

In this case, the Petitioner credibly testified that he had received a PATH Appointment Notice and attended PATH on [REDACTED]. Further, the Petitioner credibly testified that at the time of the hearing, he was attending the PATH Program. The Department presented no evidence to support the alleged sanction and removal of Petitioner from the FAP group for failure to participate in employment-related and/or self-sufficiency related activities or quit a job, were fired or reduced your hours of employment without good cause. Exhibit A. Given the failure to provide any explanation as to why the Petitioner was removed from his FAP group or to explain the Notice language or support the removal, the Department has failed to meet its burden of proof in this regard. Therefore, the FAP benefits, as determined by the Department, are incorrect as it used an incorrect group size of [REDACTED] members rather than [REDACTED] members. Exhibits A and B.

Department policy does impose sanctions for noncompliance with regard to the FAP program. BEM 233B provides the requirements that a nondeferred adult member such as the Petitioner, must follow with respect to work-related requirements in order to receive Food Assistance and provides in relevant part:

Refusing Employment

Non-deferred adult members of FAP households must follow certain work-related requirements in order to receive food assistance program benefits.

Working

Disqualify non-deferred adults who were working when the person:

- Voluntarily quits a job of 30 hours or more per week without good cause, or
- Voluntarily reduces hours of employment below 30 hours per week without good cause, or

Note: If the job quit or reduction in hours occurred more than 30 days prior to the application date, no penalty applies.

Not Working

Non-deferred adults who are **not** working or are working less than 30 hours per week must:

- Accept a bona-fide offer of employment.

Note: A bona fide offer of employment means a definite offer paying wages of at least the applicable state minimum wage.

- Follow through and participate in activities required to receive unemployment benefits (UB) **if** the client has applied for or is receiving UB. BEM 233 B, (July 1, 2013) p. 4-6.

Note: Determine good cause before implementing a disqualification.

FAP ONLY PENALTIES FOR REFUSING SUITABLE EMPLOYMENT

When a client has refused suitable employment as described above, do the following:

- Complete the noncompliance record by either completing the *Loss of Employment screen* for job quit or voluntary reduction of hours below 30 hours or by entering a noncooperation for refusal of employment on the *Noncooperation Summary screen*. The DHS-2444, Notice of Employment And/Or Self-Sufficiency Related Noncompliance will be generated upon the next run of EDBC, which will also schedule the triage appointment at the local office and place the individual into disqualification pending the negative action period.
- The following information will be populated on the DHS-2444:
 - The name of the noncompliant individual.
 - The date of noncompliance.
 - All the dates, if addressing more than one incident of noncompliance.

- The reason the client was determined to be noncompliant.
- The disqualification that may be imposed.
- The scheduled triage appointment, to be held in person or by phone, within the negative action period.
- Hold the triage appointment/phone conference to determine good cause prior to the negative action period. Good cause must be verified and provided prior to the end of the negative action period and can be based on information already on file with DHS. Document good cause determination on the Noncooperation Detail screen within 24 hours of determination.
- If the client does not participate in the triage meeting, determine good cause for FAP based on information known at the time of the determination.
- An in-person meeting is not required for FAP only. If the client calls to report a job loss determine good cause while on the phone with the client.
- Determine FAP good cause based on FAP good cause reasons defined later in this item.

In this case, as previously stated, the Department presented no evidence with respect to the reasons the Petitioner was deemed in noncompliance and removed from his FAP group based upon the above-referenced policy. Given the evidence presented, and the Petitioner's credible testimony, the Department has failed to satisfy its burden of proof regarding its removal of Petitioner from the FAP group.

Thus, based on the foregoing, the Department must recalculate the Petitioner's FAP benefits and restore him to the FAP group based upon the removal, which occurred [REDACTED].

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 **did not** act in accordance with Department policy when it removed the Petitioner from his FAP group and has failed to satisfy its burden of showing that it acted in accordance with

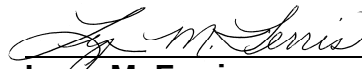
Department policy when it removed the Petitioner from his FAP group based on failure to comply with Department policy found in BEM 233B.

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 recalculate the Petitioner's FAP benefits and restore the Petitioner to his FAP group.
2. The Department shall issue an FAP supplement to the Petitioner for any FAP benefits Petitioner was eligible to receive in accordance with Department policy.
3. The Department shall remove from the Petitioner's case record any reference to a sanction imposed effective [REDACTED], as set forth in the Department's Notice of Case Action dated [REDACTED].

LMF/jaf



Lynn M. Ferris
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]

Petitioner

[REDACTED]

[REDACTED]