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GOVERNOR

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

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DIRECTOR

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Date Mailed: March 16, 2017
MAHS Docket No.: 17-002029
Agency No.: ██████████
Petitioner: ██████████

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 ██████████ from Detroit, Michigan. The Petitioner was represented by himself. ██████████ appeared as an Arabic Interpreter. The Department of Health and Human Services (Department) was represented by ██████████, Eligibility Specialist and ██████████, Hearing Facilitator.

ISSUE

Did the Department properly process the Petitioner Food Assistance (FAP) application?
Did the Department properly deny the Petitioner's Food Assistance (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 ██████████. Exhibit A
2. The Department denied the application on ██████████, by Notice of Case Action dated ██████████, due to excess income. Exhibit D
3. The Department sought verification of income on ██████████ of Petitioner's income by Verification Checklist with a due date of ██████████. Exhibit C

4. The Petitioner's application listed his wife and 3 minor children as household members. The application indicated that the Petitioner paid rent of [REDACTED] and paid for non heat electricity and heat. Exhibit A, p. 3
5. The Petitioner's wife [REDACTED] is present in the United States on a Visa which expired on [REDACTED] but had been renewed by Petitioner through [REDACTED] Exhibit J. The immigration category was IR 1. The Department found Petitioner's wife not eligible for FAP benefits based on her immigration status. The Petitioner's wife entered the U.S. on [REDACTED].
6. The Department did not send a Shelter Verification, or request proof of utility bill responsibility for heat or electric.
7. The Petitioner provided 4 pay stubs for the last 30 days as requested by the Department. Petitioner is paid biweekly. One pay of [REDACTED] was eliminated due to it being well below the normal pay. The pay stubs used were [REDACTED]; [REDACTED]; and \$ [REDACTED]. Exhibits F, G and I
8. The Department denied the Petitioner's application due to excess income on [REDACTED]. Exhibit K and Exhibit D
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 denied the Petitioner's FAP application due to excess income. Initially the Department conceded it improperly denied the application based on an error, then sought and received pay stubs. The Department also did not include the Petitioner's wife in the FAP group due to her immigration status. No costs associated with housing expense with respect to rent and heat and electricity were included in the FAP budget calculation. The Department never sought verification of

any of these expenses, even though the Petitioner notified the Department in his application that he paid rent in the amount of [REDACTED] and also paid for heat and electricity.

When processing a FAP application Department policy requires the Department request needed verification not brought to the interview. The Department did not provide the Petitioner an interview and never sought verification of Petitioner's housing expenses listed in the Petitioner's [REDACTED] application for FAP. BAM 115 requires:

- The purpose of the interview is to explain program requirements to the applicant and to gather information for determining the group's eligibility.
- The interview is an official and confidential discussion. Its scope must be limited to both of the following:
- Collecting information and examining the circumstances directly related to determining the group's eligibility and benefits.
- Offering information on programs and services available through MDHHS or other agencies.
- The person interviewed may be any responsible group member **or** AR. For CDC, the AR **cannot** be the child care provider, a department employee, or a recruiter. The client may have any other person present.

Determine the client's expenses and current situation by:

- Adding all of the client's expenses such as rent, mortgage, utilities, taxes, etc. When determining the utility amount to include in the calculation, do **not** use the heat and utility standards; use the average monthly amount the client is responsible to pay. Verification of their actual bill(s) is not required.
- FAP and CDC
- An interview **is required before denying assistance even if it is clear from the application or other sources that the group is ineligible.** (emphasis supplied)
- **FAP Only**
- Do **not** deny the application if the client has not participated in a scheduled initial interview until the 30th day after the application date **even** if he/she has returned all verifications; see

Scheduling Interviews for FAP only in this item. BAM 130, () p. 17-18.

- For **FAP only** schedule the interview as a telephone appointment **unless** specific policy directs otherwise. The interview must be held by the **20th** day after the application date to allow the client at least 10 days to provide verifications by the 30th day. BAM 115, p. 22

- An interview is required before denying assistance even if it is clear from the application or other sources that the group is ineligible. For non-expedited FAP, the interview must be scheduled **to occur** by the 20th day to allow the client at least 10 days to provide verifications by the 30th day. Do not deny the application if the client has not participated in the initial interview until the 30th day after the application date even if he/she has returned all verifications. BAM 115, p. 24.

In this case, because the Department admitted that no interview was conducted, it must re-register the () application and reprocess, hold an interview and determine housing expenses by sending the necessary verifications. It also must be noted that the Department denied the application before the verifications were due.

FAP Income Calculation

In this case the Petitioner's income calculation is at issue as the Petitioner's application was denied because of excess income, meaning his group income exceeded the income limit. The pay stubs which were provided by Petitioner were for the following amounts: (), (), (), (). Another pay stub submitted in () and was excluded as the amount was inordinately low. Exhibit H. These pay stubs were for pays received in (), () and (), and were submitted at different times. Exhibits G, F and I. The FAP Net Edg Income Results (FAP budget) demonstrated that the Department determined the Petitioner's gross earned income to be (). Exhibit L. After a review and recalculation of the pay stubs it is determined that the gross income as determined by the Department is incorrect.

The Department is to determine income by using income from the past 30 days if it accurately reflects what is expected to be received in the benefit month. The 30 day period used can begin up to 30 days before the interview date or the date the information was requested. The Department is also required to discard a pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505 () p. 5 and 6. The Petitioner is paid bi-weekly and the pay stubs were submitted on () and (). In this case the application was dated (), and thus the prior 30 days would go back to (). Based upon

the fluctuating pay amounts, the 3 pays most representative of income of [REDACTED] and [REDACTED]. To compute gross income the 3 pays are added together and divided by 3 to get the average biweekly pay. [REDACTED] [REDACTED] [REDACTED]. This average pay is then multiplied by 2.15 to get gross monthly pay which is [REDACTED]. The 2.15 factor is applied as a conversion to take into account fluctuations due to the number of scheduled pays in a month. The next step required is to subtract a 20% earned income deduction of [REDACTED], which reduces the group earned income to [REDACTED]. [REDACTED]). Once the Standard Deduction of [REDACTED], based upon a group size of 4 persons, is also deducted that adjusted gross income is [REDACTED]. BEM 505, p. 8 and RFT 250 ([REDACTED]), p. 1.

A group's benefits for a month are based, in part, on a prospective income determination. A best estimate of income expected to be received by the group during a specific month is determined and used in the budget computation.

Determine budgetable income using countable, available income for the benefit month being processed.

Thus based upon the above calculation, the Department's adjusted gross income determined to be [REDACTED] was incorrectly calculated and the FAP budget must be recalculated by the Department.

Petitioner's Wife's Immigration Status

The Department determined the Petitioner's FAP group size to consist of 4 members and excluded the Petitioner's wife based upon her immigration status. Policy for determining immigration status is found in BEM 225 ([REDACTED]). In Petitioner's application it is stated that Petitioner's wife has eligible immigration status. Exhibit A, p. 5. The evidence presented at the hearing, and relied upon by the Department, was an Immigrant Visa with a category IV Ir1 status. The face of the Visa bears the note "upon endorsement serves as temporary I 551 evidencing permanent residence for 1 year." Exhibit J. Department policy regarding this status provides:

- II-551, Alien Registration Receipt Card (Conditional Resident Alien Card). It is issued for a two-year period (expiration date on the back) to conditional permanent residents such as alien spouses of U.S. citizens/permanent residents. BEM 225, p. 35

At the hearing the Department presented the card as evidence and testified that it had been renewed. The back of the Visa indicated that it is renewed until [REDACTED]. Based upon the evidence presented it is determined that the Department correctly determined that Petitioner's spouse is not eligible to be a FAP group member, as she has not been a permanent resident for 5 years. The date on the Visa issuance is [REDACTED] [REDACTED] and thus 5 years in the U.S. is not established by the evidence. BEM 225, p.

32. In order to be eligible as a permanent resident alien the person must have an I 551 class code of RE, AM, AS, SI, or SQ or have been a permanent resident for 5 years, which is not the case in the instant matter.

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 determined that the Petitioner's wife was not eligible for Food Assistance and was not an eligible FAP group member based upon her immigration status.

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 denied the Petitioner's FAP application for excess income and without conducting an interview or seeking verification of housing expense information.

Accordingly, the Department's decision is

AFFIRMED IN PART with respect to its determination of Petitioner's wife immigration status as not eligible for receipt of Food Assistance benefits.

REVERSED IN PART with respect to the Department's denial of Petitioner's FAP application and its calculation of Petitioner's earned income and its failure to conduct an interview before denying the FAP application.

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 re-register the Petitioner's [REDACTED] FAP application and process the application in accordance with Department policy, including conducting an interview and seeking housing expense verification, as well as utility verification.
2. The Department shall issue the Petitioner a FAP supplement to the Petitioner if he is otherwise eligible for FAP benefits in accordance with Department policy.

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]