



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: April 24, 2018
MAHS Docket No.: 18-002998
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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; 42 CFR 438.400 to 438.424; 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 4/24/18, from [REDACTED] Michigan. The Petitioner appeared and testified. Petitioner was represented by her son, who also appeared as a witness and translator without objection by the Department. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED]

ISSUE

Did the Department properly close Petitioner's FAP case on the grounds of alien status?

FINDINGS OF FACT

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

1. Petitioner's family consists of 5 persons who immigrated into the US in June 2013.
2. On 1/10/13 Petitioner applied for FAP benefits for herself and her family. Petitioner submitted the green cards for all group members. The Department subsequently opened a FAP case for the group of 5.
3. On or about March 14, 2018 due to a Random Case Read it was discovered that the individual's in Petitioner's group green cards did not meet the citizenship or alien status to make them eligible to FAP benefits until they had been in the US for 5 years.
4. At all times, and repeatedly, Petitioner verified her and her groups status correctly and timely.

5. The FAP benefits issued in Petitioner's case was due to **AGENCY ERROR**.
6. 3/14/18 the Respondent issued a Notice of Case Action to close the FAP case due to the group members did not meet citizenship or immigration status.
7. On 3/19/18 Petitioner filed a hearing request.
8. On 4/1/18 the FAP case closed.
9. The Department's Hearing Summary was prepared by an individual who was not present at the administrative hearing. That hearing summary indicated that Petitioner's 1 daughter was eligible, and that this daughter's information was the only information entered over the years which triggered eligibility for entire group. The Department witness at the administrative indicated that the information on that 1 person's card did not and could not trigger eligibility as it did not meet any of the policy exceptions.

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.

All applicable policy regarding group composition and citizenship status is found at BEN 210, 211, 212, 214, 225, 554, 640, and ERM 202.

Here, policy indicates that non-citizens must in the US for 5 years before being eligible for food stamps, unless an individual meet any of the exceptions. Unrefuted evidence is that none of the exceptions are met here with any one individual in the FAP group of 5. While the hearing summary stated that one individual meet one of the exceptions, there is no evidence in Petitioners' file to support the same. Petitioner did not argue or offer any evidence to support the same. Thus, it appears that the individual who prepared the hearing summary who was not at the administrative hearing purported to have such evidence but in fact did not.

It is noted that unrefuted evidence here is that Petitioner always complied with the Department verification requests, and, that the Department has had the same verification in its file for 5 years. Petitioner has always acted in compliance with the

Department's requests, and the Department has had all the verifications for 5 years. The error here is **AGENCY ERROR**.

However, any repayment or recoupment is not at issue in this matter. Petitioner understands that should the Department take any action regarding recoupment in the future, Petitioner would receive any required notice, and will and can dispute the same in the future as well as have the right to request an administrative hearing at that time.

In this case, this ALJ has no authority to grant any more benefits than policy would allow. As such, this ALJ must uphold the closure based on the evidence of record, despite the agency error herein.

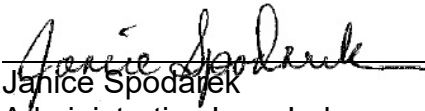
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it closed Petitioner's FAP case.

It is noted that Petitioner will meet the 5-year requirement "next month."

DECISION AND ORDER

Accordingly, the Department's decision must be AFFIRMED.

JS/nr



Janice Spodarek
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]

[REDACTED]

[REDACTED]

Petitioner

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