



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: June 17, 2019
MOAHR Docket No.: 19-004916
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 June 12, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Territa Rivers-Jones, Family Independence Manager.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) group composition?

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 October 18, 2018, the Department received Petitioner's completed Redetermination listing her son as a full-time student in college at [REDACTED] and listing her nephew as having left the house.
2. On November 19, 2018, the Department received another Redetermination from Petitioner listing the same information.
3. On December 26, 2018, the Department issued a Notice of Case Action to Petitioner informing her that her son was not an eligible group member due to his student status.
4. On March 27, 2019, Petitioner submitted a Change Report showing that her son had returned to the home.

5. On the same day, the Department issued a Notice of Case Action to Petitioner informing her that effective April 1, 2019, her nephew was added back in the group but that her son was removed from the group.
6. On May 9, 2019, the Department received Petitioner's request for hearing disputing the Department's determination of her group composition for FAP group.

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, Petitioner disputes the Department's determination of her group size. FAP group composition is established by determining who lives together, the relationship of those living together, and whether the people living together purchase and prepare food together or separately. BEM 212 (April 2019), p. 1. A person is ineligible for FAP benefits if the person is in student status and does not meet any of the exception criteria found in BEM 245. BEM 212 (April 2019), p. 9. For FAP cases, a person is in student status if the person is aged 18 to 49, enrolled at least half-time or more in a vocational, trade, business, or technical school requiring at least a high school diploma or equivalency certificate, or if they are participating in a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245 (January 2018), pp. 3-4. To be eligible for FAP benefits, a person in student status must meet one of the following criteria:

- Receiving Family Independence Program (FIP) benefits.
- Enrolled in an institution of higher education as a result of participating in a Job Training Partnership Act (JTPA) program, program under Section 236 of the Trade Readjustment Act of 1974, another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.

- 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.
- Participating in an on-the-job training program.
- Participating in a State or Federally funded work study program during the regular school year.
- Providing more than half of the physical care of a group member under the age of six.
- Providing more than half of the physical care of a group member age six through 11 and the local office has determined adequate childcare is not available to enable the person to attend class and work at least 20 hours per week or participate in a state or federally financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education who care for a dependent under age 12.

BEM 245, pp. 4-5. Both parties agree that Petitioner's son was age 18 at the time of Redetermination, that he was attending college full time, and that he was not living in the home. However, Petitioner noted on the Redetermination that her son was participating in a work study program. Participation in a work study program qualifies Petitioner's son for participation in the FAP group even though he is in student status. *Id.* The Department erred by excluding her son from the FAP group.

Despite the Department's error in excluding Petitioner's son from the FAP group effective January 2019, the Department issued the Notice of Case Action informing Petitioner of this change on December 26, 2018; and Petitioner's hearing request was received on May 9, 2019. Policy provides that all hearing requests must be received by the local office within 90 days of the issuance of the Notice of Case Action. BAM 600 (October 2018), p. 6. Since Petitioner's hearing request was not received within 90 days of the Department's Notice of Case Action, the action cannot be corrected by this decision for the period from January 2019 through the date upon which the Department issued its next Notice of Case Action excluding her son from the group.

On March 27, 2019, Petitioner reported that her son was back in the home. She also provided the Department with proof that her son had ended his enrollment at [REDACTED]. On the same day, the Department issued a Notice of Case Action to Petitioner informing her that her nephew was added back to the group and her son was removed from the group effective April 1, 2019. Since Petitioner's son never should have been excluded from the FAP group due to participation in a work study program, and because Petitioner reported that he was in the home with the end of his enrollment, the Department should have placed her son back in the FAP group as an eligible group member.

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 excluded Petitioner's son from the FAP group effective April 1, 2019.

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. Redetermine Petitioner's FAP group eligibility effective April 1, 2019;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received effective April 1, 2019; and,
3. Notify Petitioner in writing of its decision.



AMTM/jaf

Amanda M. T. Marler
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

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

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:
Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Dora Allen
MDHHS-Wayne-76-Hearings

Petitioner

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M Holden
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