



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: June 29, 2020
MOAHR Docket No.: 20-002077
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 24, 2020 from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Alice Gilmer, Family Independence Manager, and Dana Draper-Swan, Assistance Payments Worker.

ISSUE

Did the Department properly deny Petitioner's [REDACTED] 2019 application for Food Assistance Program (FAP) benefits?

Did the Department properly deny Petitioner's [REDACTED], 2019 application for FAP benefits?

FINDINGS OF FACT

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

1. At all times relevant to the instant matter, Petitioner was employed in a full-time capacity.
2. From September 18, 2019 through October 15, 2019, Petitioner was on strike and receiving \$[REDACTED] per week in strike pay.

3. On [REDACTED], 2019, Petitioner submitted to the Department an application for FAP benefits.
4. Petitioner's application was denied.
5. During a phone call shortly after the denial was issued, Petitioner requested a hearing during a phone call. Petitioner's testimony in that regard was credible and corroborated by the Department's own records. While the Department's records do not reflect Petitioner's filing of the hearing request, the records do, in a later case note, indicate that Petitioner had been convinced to not go forward with the hearing. Petitioner was also adamant that he never agreed to withdraw his hearing request. Given the consistency of Petitioner's testimony compared with the clear absence of records from the Department, it is found that Petitioner submitted a timely hearing request concerning the denial of his initial FAP application.
6. On [REDACTED], 2019, Petitioner submitted another application for FAP benefits.
7. Petitioner's application was denied on December 19, 2019.
8. On [REDACTED] 2020, Petitioner submitted to the Department a request for hearing objecting to the denial of his FAP application.

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 timely objected to the Department's denials of each of his FAP applications. Petitioner chose to pursue FAP benefits due to his substantial decrease in income that resulted from the decision of his labor union to go on strike during contract negotiations. The strike lasted from September 18, 2019 through October 15, 2019, during which time Petitioner's income consisted of \$[REDACTED] per week in strike pay. Both before and after the strike, Petitioner was working full-time hours and receiving gross wages well in excess of \$[REDACTED] per week.

In order for a group size of one such as Petitioner's to be eligible for FAP benefits, that group must have countable income that is under the gross income limit. BEM 550 (January 2017), p. 1. The countable gross income limit applicable to Petitioner is \$1,354 per month. RFT 250 (October 2019), p. 1.

There are special rules applicable for determining the countable income of someone who is out of work due to a strike. BEM 227 (July 2013); BEM 501 (January 2020), pp. 1-2; BEM 503 (January 2020), p. 33; BEM 550 (January 2017), p. 4. The general rule is that a striking applicant is only eligible for FAP benefits if the applicant was eligible for FAP benefits before the strike and continued to be eligible. BEM 227, p. 1. The way to determine that question is to evaluate the group's countable pre-strike income and use that as the countable income figure. BEM 227, p. 2.

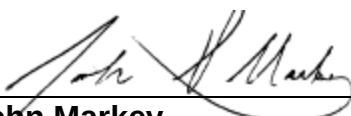
Petitioner's pre-strike income was well over \$[REDACTED] per month. The gross income limit applicable to his group size is \$1,354 per month. As Petitioner's countable income greatly exceeds the limit, Petitioner is ineligible for FAP benefits. While the Department cited other reasons and the process left much to be desired, the final conclusion that Petitioner was ineligible was correct. The rules applicable to determining Petitioner's countable income render Petitioner nowhere near income eligible for FAP benefits.

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 applications for FAP benefits.

DECISION AND ORDER

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

JM/tm



John Markey

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

Denise McCoggle
27260 Plymouth Rd
Redford, MI
48239

Petitioner

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

cc: FAP: M. Holden; D. Sweeney
AP Specialist-Wayne County