



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

Date Mailed: October 13, 2020
MOAHR Docket No.: 20-005735
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 October 8, 2020, from Detroit, Michigan. Petitioner was present with her daughter/Arabic Interpreter, [REDACTED]. The Department of Health and Human Services (Department) was represented by Alaric Edgeworth, Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefit case?

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 was an ongoing FAP recipient.
2. On July 24, 2020, Petitioner completed a redetermination related to her FAP benefit case (Exhibit A, pp. 7-20).
3. On August 19, 2020, the Department sent Petitioner a Notice of Case Action informing her that her FAP benefit case was closing effective September 1, 2020, ongoing (Exhibit A, p. 6).
4. On August 28, 2020, Petitioner submitted a request for hearing disputing 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, Petitioner was an ongoing FAP recipient. On July 24, 2020, Petitioner completed a redetermination related to her FAP benefit case. In the redetermination, Petitioner reported that her three children moved out of the household. During the interview, Petitioner reported that her three children live in a separate part of their single-family home. The Department stated that the residence only had one address and did not have separate utilities. As a result, the Department included the three children, one of which had income, in Petitioner's FAP group. The Department determined that Petitioner's household income exceeded the limit for their group size and closed her FAP benefit case. Petitioner submitted a request for hearing disputing the Department's decision to include her three children in her FAP group.

FAP budget calculations require the consideration of the group size. The Department will determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. BEM 212 (July 2019), p. 1. The FAP group composition is established by determining all of the following: who lives together, the relationship(s) of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the person(s) resides in an eligible living situation. BEM 212, p. 6. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p. 1. Living with means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. BEM 212, p. 3. Persons who share only an access area such as an entrance or hallway or non-living area such as a laundry room are not considered living together. BEM 212, p. 3.

At the hearing, Petitioner's daughter testified that she and her two sisters live on the first floor of their ranch-style home. Petitioner's daughter stated that her mother and her father live in the basement. The upstairs portion of the home has a separate entrance from the basement. Both the basement and the first floor have their own separate kitchen, living room and bathroom. Petitioner's daughter testified that the basement entrance has a door that separates the entrance from the upstairs living quarters.

Petitioner's daughter stated that she and her sisters do not share any of the first level with their parents, and vice versa. Petitioner's daughter testified that she and her sisters do not share space with their parents and have limited contact with their parents due to the COVID-19 pandemic. Petitioner's daughter stated that she and her sisters work in the healthcare field and their parents are immunocompromised. Petitioner's daughter also testified that she and her sisters pay their parents rent.

Petitioner's daughter's testimony that she and her sisters live separately from their parents was credible. Policy does not state that separate addresses and utilities are required for individuals to have separate residences. Petitioner does not share any common spaces with her daughters and has a separate entrance to her living quarters. Additionally, Petitioner's daughters pay her rent for the use of the upstairs residence. Per policy, Petitioner does not live with her daughters. Therefore, the Department did not act in accordance with policy when it included Petitioner's daughters in her FAP group. Thus, the Department did not act in accordance with policy when it closed Petitioner's FAP benefit case.

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 closed Petitioner's FAP benefit case.

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 eligibility as of September 1, 2020, ongoing;
2. Remove Petitioner's children from her FAP group;
3. If Petitioner is eligible for FAP benefits, issue supplements for which she is eligible to receive; and
4. Notify Petitioner of its decision in writing.

EM/cc



Ellen McLemore

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

Via Email:

MDHHS-Wayne-17-Hearings
M. Holden
D. Sweeney
BSC4-HearingDecisions
MOAHR

Petitioner - Via USPS:

