



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: January 8, 2018
MAHS Docket No.: 17-015596
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 January 8, 2018, from Lansing, Michigan. Petitioner was present for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by Chantel Wilbon, Hearings Facilitator.

ISSUES

Did the Department properly reduce Petitioner's Food Assistance Program (FAP) group composition effective December 1, 2017?

Did the Department properly close Petitioner's FAP benefits effective December 1, 2017?

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 recipient of FAP benefits.
2. Petitioner's FAP group composition was four (Petitioner plus her three children).
3. On October 30, 2017, Petitioner submitted her redetermination, in which she reported the following: (i) her household size is four; (ii) her eighteen-year-old daughter with a date of birth of March 6, 1999, is claiming disability (hereinafter referred to as "Adult Child A"); (iii) Adult Child A attends college full-time; and (iv) Petitioner reports weekly wages and included pay stubs with her redetermination. [Exhibit A, pp. 5-13 and 15-17.]

4. On October 31, 2017, the Department completed a telephone interview with Petitioner in which she reported Adult Child A attends college full-time and Adult Child A is not currently employed nor does Adult Child A have a minor child in the home. [Exhibit A, pp. 2 and 22.]
5. On November 8, 2017, the Department processed the redetermination, which resulted in Adult Child A no longer being in the FAP group due to ineligible student status and Petitioner's FAP benefits closed due to excess income. [Exhibit A, p. 2.]
6. On November 8, 2017, the Department sent Petitioner a Notice of Case Action (case action) notifying her that the following effective December 1, 2017: (i) Adult Child A is no longer in the FAP group due to ineligible student status; and (ii) the FAP benefits closed due to the net income exceeding the limits. [Exhibit A, pp. 18-21.]
7. On November 30, 2017, Petitioner filed a hearing request, protesting the Department's action. [Exhibit A, pp. 3-4.]

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 reduced Petitioner's FAP group composition and closed her FAP benefits effective December 1, 2017. The undersigned Administrative Law Judge (ALJ) will address each issue separately below:

FAP group composition

In the present case, the Department reduced Petitioner's FAP group composition from four to three after excluding Adult Child A due to ineligible student status.

For FAP cases, a person enrolled in a post-secondary education program may be in student status. BEM 245 (October 2017), p. 2. A person in student status must meet certain criteria in order to be eligible for assistance. BEM 245, p. 2.

For FAP cases, a person is in student status if he/she is:

- Age 18 through 49 and
- Enrolled half-time or more in a:
 - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.
 - Regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required.

BEM 245, pp. 3-4.

It was not disputed that Adult Child A met the above requirements. Additionally, though, in order for a person in student status to be eligible, they must meet one of the following criteria:

- Receiving FIP.
- Enrolled in an institution of higher education as a result of participation in:
 - A JTPA program.
 - A program under section 236 of the Trade Readjustment Act of 1974 (U. S. C. 2296).
 - Another State or local government employment and training program.
- *Physically or mentally unfit for employment.*
- Employed for at least an average of 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. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year.
To qualify under this provision the student must be approved for work study during the school term and anticipate actually working during that time. The exemption:
 - Starts the month the school term begins, or the month work study is approved, whichever is later.
 - Continues until the end of the month in which the school term ends, or when the local office becomes aware that the student has refused a work-study assignment.
 - Remains between terms or semesters when the break is less than a full month, or the student is still participating in work study during the break.
- 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 eleven and the local office has determined adequate child care is not available to:
 - Enable the person to attend class and work at least 20 hours per week.
 - 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 cares for a dependent under age 12. This includes a person who does not live with his or her spouse, who has parental control over a child who does **not** live with his or her natural, adoptive or stepparent.

BEM 245, pp. 3-5 (emphasis added). For the care of a child under age six, consider the student to be providing physical care as long as he or she claims primary responsibility for such care, even though another adult may be in the FAP group. BEM 245, p. 5.

When determining the availability of adequate child care for a child six through 11, another person in the home, over 18, need not be a FAP group member to provide care. BEM 245, p. 5.

The person remains in student status while attending classes regularly. BEM 245, p. 5. Student status continues during official school vacations and periods of extended illness. BEM 245, p. 5. Student status does not continue if the student is suspended or does not intend to register for the next school term (excluding summer term). BEM 245, p. 5.

Additionally, verification sources for physical or mentally unfit for employment verification states the following:

- Award letter or other verification of eligibility for Retirement, Survivors, and Disability Insurance (RSDI) or Supplemental Security Income (SSI) on the basis of disability.
- Award letter or other verification of eligibility for disability benefits issued by government or private sources.
- Statement from an M.D. or D.O.
- Statement from a psychologist.

BEM 245, pp. 11-12.

At the hearing, the Department argued that Adult Child A was not an eligible student; therefore, she could not be a member of Petitioner's FAP group composition. However, Petitioner argued that Adult Child A could not attend college and work at the same time due to her learning disability. In fact, Petitioner indicated in her redetermination that Adult Child A is claiming disability. [Exhibit A, p. 6.] Petitioner testified that Adult Child A does not receive Social Security disability benefits. The Department did not present any evidence showing that it requested verification of Adult Child A's claim of disability.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it reduced Petitioner's FAP group composition. As stated above, in order for a person in student status to be eligible, they must meet one of the criteria listed in BEM 245, which includes being physically or mentally unfit for employment. BEM 245, p. 4. Petitioner clearly argued that Adult Child A is physically or mentally unfit for employment due to her child's learning disability. Petitioner did not present evidence showing that Adult Child A is physically or mentally unfit for employment (i.e., statement from a psychologist); however, she indicated in her redetermination that Adult Child A is claiming disability. [Exhibit A, p. 6.] Based on this statement in the redetermination, the Department should have requested verification from Petitioner verifying Adult Child A's claim of disability. The Department tell the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. The Department uses the DHS-3503, Verification Checklist (VCL), to request verification. BAM 130, p. 3. The Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. BAM 130, p. 7. The undersigned is not determining one way or another that Adult Child A should be part of Petitioner's FAP group composition. However, Petitioner clearly reported that Adult Child A is claiming a disability and if verification shows that Adult Child A is *physically or mentally unfit for employment*; then, Adult Child A would have met the requirements for student status eligibility. As such, the Department is ordered to redetermine Petitioner's FAP group composition, which includes verifying Adult Child A's claim of disability. See BAM 130, pp. 3 and 7 and BEM 245, pp. 4 and 12.

FAP case closure

In the present case, the Department also closed Petitioner's FAP benefits effective December 1, 2017, due to the net income exceeding the limits. [Exhibit A, pp. 18-20.]

BEM 556 states that if the income amount exceeds the maximum monthly net income, then deny benefits. See BEM 556 (July 2013), p. 5. Moreover, a non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. BEM 550 (January 2017), p. 1. A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550, p. 1. RFT 250 indicates that the monthly net income (100%) limit for a group size of three is \$1,702, and a group size of four is \$2,050. RFT 250 (October 2017), p. 1.

In this case, the Department argued that Petitioner's income exceeded the net income limit of \$1,702 for a group size of three. [Exhibit A, p. 19.] However, the Department failed to provide a FAP budget for December 2017 to show how the Department determined that Petitioner's net income exceeded the limits.

The local office and client or Authorized Hearing Representative (AHR) will each present their position to the Administrative Law Judge (ALJ), who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (October 2017 and January 2018), p. 36. The ALJ determines the facts based only on evidence introduced at the hearing, draws a

conclusion of law, and determines whether MDHHS policy was appropriately applied. BAM 600, pp. 38-39.

Based on the foregoing information and evidence, the Department did not satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FAP benefits effective December 1, 2017. The Department needs to establish how determined Petitioner's income exceeded the policy limits. However, the Department failed to present evidence, a FAP budget, to show how her income had exceeded the limits. Thus, the Department is ordered to recalculate Petitioner's FAP allotment effective December 1, 2017.

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 (i) the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it reduced Petitioner's FAP group composition to three effective December 1, 2017; and (ii) the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FAP benefits effective December 1, 2017.

Accordingly, the Department's FAP decisions are **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 composition effective December 1, 2017;
2. Recalculate the FAP budget for December 1, 2017;
3. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from December 1, 2017; and
4. Notify Petitioner of its decision.

EF/nr


Eric J. Feldman
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

Mark Epps
4809 Clio Road
Flint, MI
48504

Genesee Clio County DHHS- via
electronic mail

BSC2- via electronic mail

M. Holden- via electronic mail

D. Sweeney- via electronic mail

Petitioner

