



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: October 18, 2018
MAHS Docket No.: 18-009362
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 October 11, 2018, from Lansing, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Valerie Foley, Hearings Facilitator. During the hearing, a 20-page packet of documents was offered and admitted as Exhibit A, pp. 1-20.

ISSUE

Did the Department properly remove Petitioner's daughter from her Food Assistance Program (FAP) benefits case for allegedly being an ineligible student?

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 is an ongoing FAP recipient.
2. Prior to September 1, 2018, Petitioner was in an FAP group of two receiving \$352 per month in FAP benefits. Exhibit A, pp.17-20.
3. On July 5, 2018, the Department issued to Petitioner a Redetermination, Form 1010, in order to gather relevant information regarding Petitioner's ongoing eligibility for FAP benefits. Exhibit A, pp. 9-16.

4. On [REDACTED] 2018, Petitioner returned the completed Redetermination to the Department. In the Redetermination, Petitioner certified to the Department that her daughter and fellow FAP group member, [REDACTED], was attending [REDACTED] on a full-time basis. Exhibit A, pp. 9-16.
5. On July 17, 2018, Petitioner submitted to the Department paystubs showing her daughter started working in June 2018 and was working approximately 20 hours per week. Exhibit A, pp. 5-8.
6. Starting August 16, 2018, Petitioner's daughter began attending [REDACTED] where she takes three classes and works for approximately 20 hours per week.
7. On August 14, 2018, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her daughter was being removed from the FAP group effective September 1, 2018, because she was not an eligible student. Petitioner's monthly FAP benefits were thereby reduced from \$352 per month to \$192 per month. Exhibit A, pp. 17-20.
8. On [REDACTED] 2018, Petitioner submitted to the Department a request for hearing objecting to 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.

The Department removed Petitioner's daughter, [REDACTED], from her FAP group after the Department concluded Dezaray was an ineligible student. Petitioner contends that her daughter is not an ineligible student.

An individual who is enrolled at least half-time in an institution of higher education is considered in student status and shall be ineligible for FAP benefits unless that person meets certain exemptions. 7 CFR 273.5(a) and (b); BEM 245 (January 1, 2018), pp. 3-4. Department policy states that a "person remains in student status while attending classes regularly.... Student status does not continue if the student... does not intend to register for the next school term." BEM 245, p. 5. One of the ways that an

individual in student status may become eligible for FAP benefits is for that individual to work at least an average of 20 hours per week. BEM 245, p. 5.

In this case, the Department received a report that [REDACTED] was going to be attending college in the fall and was working, along with all of [REDACTED] paystubs she had received up to that point. The Department, based on that limited information, concluded that [REDACTED] was in student status and that her hours were insufficient to render her eligible.

The evidence presented during the hearing, however, was insufficient to support either of the necessary findings. First, the Department did not provide sufficient evidence to establish that [REDACTED] was, in fact, in student status. The Department was unaware of how many credits [REDACTED] required for a student to be full-time, half-time, or part-time. Additionally, the Department did not know how many credits [REDACTED] was taking. Thus, on the record presented, the Department did not substantiate its finding that [REDACTED] should be in student status. Likewise, the Department failed to show that [REDACTED] if she was in fact in student status, did not meet one of the exceptions. The paystubs presented by the Department show that during the limited time [REDACTED] had been working, she had been averaging approximately 20 hours per week.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it removed Dezaray from Petitioner's FAP group for allegedly being an ineligible student.

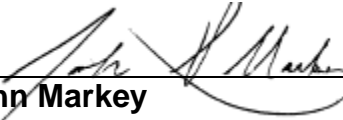
Accordingly, the Department's decision is **REVERSED**.

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. Add Dezaray back to Petitioner's FAP group, effective September 1, 2018;
2. Follow Department policy regarding verification of eligibility related issues, including student status and any exceptions to student ineligibility;
3. Recalculate Petitioner's FAP benefits effective September 1, 2018;
4. If Petitioner is eligible for additional benefits, issue Petitioner any supplemental benefits she may thereafter be due; and

5. Issue written notice of any case action(s) in accordance with Department policy.

JM/dh



John Markey
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) 763-0155; 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

Susan Noel
26355 Michigan Ave.
Inkster, MI 48141

Wayne County (District 19), DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]
[REDACTED]
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