



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: April 26, 2019
MOAHR Docket No.: 19-003131
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 April 24, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Richkelle Curney, Hearings Facilitator. During the hearing, a 24-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-24.

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 April 1, 2019, Petitioner was in an FAP group of four. The group included Petitioner and Petitioner's three children.
3. On February 5, 2019, the Department issued to Petitioner a Redetermination in order to gather relevant information regarding Petitioner's ongoing eligibility for FAP benefits. Exhibit A, pp. 3-10.
4. On [REDACTED] 2019, Petitioner returned the completed Redetermination to the Department. In the Redetermination, Petitioner informed the Department that her

■ year old daughter, ■ was attending ■ on a full-time basis and that her ■ year old son, ■ was attending “early college” on a full-time basis. Exhibit A, pp. 9-16.

5. “Early college” is a dual enrollment program through ■ whereby currently enrolled high school students are permitted to take college courses for college credits.
6. On March 13, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that ■ and ■ were being removed from the FAP group effective April 1, 2019, because they were not eligible students. Petitioner’s monthly FAP benefits were thereby reduced to \$315 per month. Exhibit A, pp. 1-2.
7. On ■, 2019, 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 ■ and ■ from Petitioner’s FAP group after the Department concluded they were ineligible students. Petitioner objects to that action and credibly testified that ■ was still in high school.

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 removed both ■ and ■ from Petitioner’s FAP case based on the information provided in by Petitioner in the Redetermination Petitioner submitted on ■ 2019. Based on what was submitted, it was certainly

reasonable to remove [REDACTED] from the case. She was not working, was [REDACTED] years old, and Petitioner stated that she attended a known community college in the area. Thus, [REDACTED] was in student status and was not an eligible student as she was not working.

However, with respect to [REDACTED] the Department's action cannot be sustained. The only evidence that calls into question whether [REDACTED] was in student status was a statement on the Redetermination that [REDACTED] was in "early college." That statement is insufficient to determine that [REDACTED] was enrolled full-time at an institution of higher education, which would place him in student status. Rather, it raised the question of whether [REDACTED] was perhaps in student status.

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (April 2017), p. 1. Additionally, the Department must obtain verification when information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BAM 130, page 1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3.

In this case, the issue of whether [REDACTED] was in student status was unclear based on the information provided in the Redetermination. Accordingly, the Department was required, before removing him from the case, to allow Petitioner the opportunity to verify the information and clarify the issue. On the record presented, the Department should not have placed [REDACTED] in student status.

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 [REDACTED] from Petitioner's FAP group for allegedly being an ineligible student. However, the Department met its burden of showing that [REDACTED] was properly determined to be an ineligible student.


Accordingly, the Department's decision is **AFFIRMED** with respect to [REDACTED] and **REVERSED** with respect to [REDACTED].

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 [REDACTED] back to Petitioner's FAP group, effective April 1, 2019;
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 April 1, 2019;
4. If Petitioner is eligible for additional benefits, issue Petitioner any supplemental benefits she may be due; and
5. Issue written notice of any case action(s) in accordance with Department policy.

JM/cg



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 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- Hearing Decisions
MAHS

Petitioner – Via First-Class Mail:

