



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: June 8, 2020
MOAHR Docket No.: 20-002072
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 June 3, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Kelly Teed, Hearing Facilitator.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) eligibility?

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 with a household group composition of three, which comprised of herself and her two children.
2. On [REDACTED], 2020, Petitioner completed an interview related to a State Emergency Relief (SER) application (Exhibit A, pp. 24-25), at which she acknowledged that she was residing with her Living Together Partner (LTP).
3. On February 25, 2020, the Department sent Petitioner a Notice of Case Action informing Petitioner that her FAP benefit amount was decreasing effective April 1, 2020, ongoing, as her LTP, and his income, were considered when determining her FAP benefit amount (Exhibit A, pp. 11-16).

4. On March 9, 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. Petitioner's group composition consisted of herself and her two children. On [REDACTED], 2020, Petitioner completed an interview related to an SER application. Petitioner notified the Department that she was residing with her LTP, who had income from employment. The Department included Petitioner's LTP in her FAP group, as well as his income from employment, in the calculation of her FAP benefit amount. Petitioner submitted a request for hearing disputing the Department's decision to include her LTP 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. 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. 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. The phrase, purchase and prepare together, is meant to describe persons who usually share food in common. BEM 212, p. 5. Persons usually share food in common if any of the following conditions exist: they each contribute to the purchase of food, they share the preparation of food, regardless of who paid for it or they eat from the same food supply, regardless of who paid for it. BEM 212. In general, persons who live together and purchase and prepare food together are members of the FAP group. BEM 212, p. 6.

The Department testified that Petitioner acknowledged at the [REDACTED], 2020 interview, that she resides with her LTP. The Department also stated that Petitioner

admitted that she purchases and prepares food with her LTP. As a result, the Department included Petitioner's LTP in her FAP group.

At the hearing, Petitioner testified that she never told the Department that she prepares or consumes food with her LTP. Petitioner stated that she informed the Department that she purchases food with her LTP. Petitioner elaborated at the hearing that her LTP transports her to the grocery store and they do their shopping at the same time. Petitioner testified that she and her LTP purchase their food separately with different sources of funds. Petitioner stated she does not purchase or prepare food with her LTP.

The only evidence presented by the Department that Petitioner admitted to purchasing and preparing food with her LTP was the interview guide. The individual that conducted the interview was not present at the hearing to provide firsthand testimony of the statements made by Petitioner. Petitioner denied making the statements in the interview guide. In the absence of such evidence, the Department failed to establish that it acted in accordance with policy when including Petitioner's LTP in her FAP group. Therefore, the Department failed to establish that it acted in accordance with policy when it determined Petitioner's FAP eligibility.

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 determined Petitioner's FAP eligibility.

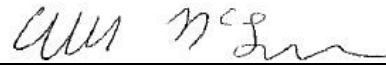
Accordingly, the Department's decision is **REVERSED**.

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 April 1, 2020, ongoing;
2. Remove Petitioner's LTP from her FAP group;

3. If Petitioner is eligible for additional FAP benefits, provide her with supplements she is entitled to receive; and
4. Notify Petitioner of its decision in writing.

EM/cg



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-Macomb-12-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

