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GOVERNOR

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

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Date Mailed: June 25, 2020
MOAHR Docket No.: 20-003099
Agency No.: 101630609
Petitioner: Neelyian Ambrose

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 17, 2020, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Rollin Carter Hearing Facilitator. Department Exhibit 1, pp. 1-30 was received and admitted.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On March 30, 2020, Petitioner applied for FAP and State Emergency Relief (SER).
2. On April 16, 2020, Notice of Case Action was sent to Petitioner informing her that she was approved for FAP \$16 per month for a household of 2. (Ex. 1, pp. 6-10)
3. Petitioner resides with her two sons who are 19 and 21 years old.
4. Petitioner's son is a student but was not working 20 hours per week at the time of application.
5. Petitioner has gross earned income of \$2,549 per month.

6. On April 20, 2020, Petitioner requested hearing disputing the determination of FAP benefits. (Ex. 1, pp. 4-6)

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.

FAP Only

A person is in student status if he 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.

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 Job Training Partnership Act (JTPA) program.

A program under section 236 of the Trade Readjustment Act of 1974 us 19 USC 2341, et. seq.

Enrolled in a FAE&T or FAE&T plus, in a component or components that are either:

Part of a program of career and technical education as defined in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302).

Are limited to remedial courses, basic adult education, literacy, or English as a second language.

An employment and training program for low-income households operated by state and local government where one or more of the components of such program is at least equivalent to an acceptable FAP employment and training program component. This includes a program under the Carl D. Perkins Career and Technical Education Improvement act of 2006, administered by one of the 35 participating colleges that will lead to employment.

Note: Some examples of career and technical programs offering certificate or diploma that will lead to employment are data entry occupations, medical and health care careers, HVAC and refrigeration, hospitality and tourism management.

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 an average of 20 hours per week and earning an average 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.

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 Food Assistance Program (FAP) group.

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. The person remains in student status while attending classes regularly. Student status continues during official school vacations and periods of extended illness. 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

In this case, Petitioner applied for FAP and was awarded \$16 per month for a household of 2. Petitioner resides with her 2 adult children. Petitioner's younger son is excluded from the FAP group because he is attending college but is not working 20 hours per week. Petitioner questioned why her son is excluded and questioned the amount of FAP benefits received.

Department policy requires that students enrolled half time need to meet certain criteria to be included in the FAP group. Petitioner's child was not working 20 hours and did not meet any of the other criteria to meet the student status requirements to be eligible to be member of the FAP group. BEM 245

With regard to the FAP budgeting, the Petitioner did not dispute the amounts the Department used for income and shelter expense. The Department presented sufficient evidence to establish that Petitioner receives \$2,549 in employment income. After deducting the \$161 standard deduction, and excess shelter deduction, Petitioner has \$1871 in net income. A household of 2 that has \$1,871 in net income is entitled to \$16 in monthly FAP benefit. This is the amount determined by the Department and it is proper and correct. RFT 260, BEM 556, 7 CFR § 273.9

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 acted in accordance with Department policy when it determined Petitioner's FAP benefit.

DECISION AND ORDER

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

AM/nr



Aaron McClintic
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

DHHS

Elisa Daly
411 East Genesee
P.O. Box 5070
Saginaw, MI
48607

Saginaw County DHHS- via electronic
mail

BSC2- via electronic mail

M. Holden- via electronic mail

D. Sweeney- via electronic mail

Petitioner

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