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GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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██████████, MI ██████████

Date Mailed: May 12, 2021  
MOAHR Docket No.: 21-001802  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on May 5, 2021. Petitioner represented herself. The Department was represented by Rollin Carter.

**ISSUE**

Did the Department of Health and Human Services (Department) properly close Petitioner's cash assistance?

**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 ██████████ 2021, the Department received Petitioner's application for Family Independence Program (FIP) benefits. Exhibit A, pp 22-28.
2. Petitioner has a child (dob ██████████ 2014) that is enrolled in school. Exhibit A, p 23.
3. From December 17, 2020, through February 1, 2021, Petitioner's child (dob ██████████ 2014) was absent from school without an excuse for 8 days. Exhibit A, pp 11-12.
4. In the 21 days prior to filing her application for cash assistance, Petitioner's child (dob ██████████ 5, 2014) did not receive any unexcused absences. Exhibit A, pp 11-12.
5. On March 16, 2021, the Department notified Petitioner that she was no longer eligible for Family Independence Program (FIP) benefits effective March 16, 2021. Exhibit A, pp 6-10.

6. On March 29, 2021, the Department received Petitioner's request for a hearing protesting the closure of her Food Assistance Program (FAP) benefits. Exhibit A, pp 4-5.
7. On April 1, 2021, the Department notified Petitioner that she was no longer eligible for Family Independence Program (FIP) benefits effective March 16, 2021. Exhibit A, pp 13-20.

### **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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 through 679c. The Department administers FIP pursuant to 45 CFR 233 through 261, MCL 400.10, the Social Welfare Act, MCL 400.1 et seq, and Mich Admin Code, R 400.3101 through R 400.3131.

Dependent children are expected to attend school full-time, and graduate from high school or a high school equivalency program, to enhance their potential to obtain future employment leading to self-sufficiency. Department of Health and Human Services Bridges Eligibility Manual (BEM) 245 (April 1, 2021), p 1.

If verification is returned that a dependent child or minor parent receiving FIP is not attending school full-time, an attendance compliance test is required before taking appropriate action regarding the FIP group. The attendance compliance test requires the dependent child or minor parent to attend all school days for 21 consecutive calendar days. BEM 245, p 8.

Accept the client's statement that a ■■■-year-old is enrolled and attending school full-time unless questionable. BEM 245, p 11.

On ■■■■■■■■ ■■■ 2021, the Department received Petitioner's application for cash assistance. Petitioner has a child (dob ■■■■■■■■ ■■■ 2014) that is enrolled in school full time. On March 16, 2021, the Department notified Petitioner that she was not eligible for cash assistance but provided an incorrect reason for the termination. On April 1, 2021, the Department amended it closure notice to indicate that benefits were being closed because Petitioner's child was not attending school regularly.

The school provided the Department with a copy of the attendance records of Petitioner's child for the entire school year. From December 17, 2020, through February 1, 2021, Petitioner's ■■■-year-old child was absent from school without an excuse on 8 days. It is not clear how this information is relevant towards Petitioner's eligibility for cash assistance as of her February 26, 2021 application date.

The Department's representative testified that the school determines whether a child is meeting the school's attendance requirements. In this case, the hearing record does not include any determination by the school of whether the child's attendance is satisfactory or not, but only a listing of absences and how those absences were classified. The hearing record also does not include the reason that the attendance records were requested from the school considering that Petitioner's child is a ■year-old, and the Department is directed by BEM 245 to accept the client's statement that a ■year-old is attending school full-time unless questionable.

In September and October of 2020, Petitioner's child was absent from school on numerous occasions. Petitioner testified that during that period, school was being conducted virtually. The evidence does not include a statement from the school as to whether the child was meeting attendance requirements, but it was not unreasonable for the Department to conclude that 8 unexcused absences is not satisfactory.

The hearing record does not include any evidence that Petitioner's was denied cash assistance in 2020 based on the unexcused absences in September and October of 2020, or whether she was reapplying for benefits in 2021. It is likely that she would have been denied cash assistance in the fall of 2020, but the Department bears the burden of going forward with such evidence. Assuming that the child's full attendance record was relevant to Petitioner's eligibility for cash assistance when she filed her application for assistance on February 26, 2021, then the child's attendance record in the days leading up the Petitioner's application for cash assistance is equally relevant.

Petitioner's child was absent from school on February 8, 2021. In the 21 consecutive calendar days following that absence, the child was marked tardy once, but was not absent from school for any reason. The hearing record supports a finding that if a "compliance test" had been conducted as of the application date, then Petitioner's child would have successfully completed that test.

The child was absent from school on four days from March 3, 2021, through March 9, 2021. Those absences are marked as "sick" in the school records, and there is no evidence to conclude whether the child was meeting attendance requirements under the school's policies. The only evidence available indicates that the child was absent due to illness. Department policy in BEM 245 does not include instructions for determining whether an absence is excusable or not, or whether attendance is to be considered satisfactory. In the absence of any determination from the school as to whether the child was meeting attendance requirements under school policy, it is not unreasonable to expect that a child staying home from school due to illness during a global pandemic would be excused by the school. It is also likely that the school would not permit a sick child to attend school in order for the family to remain eligible for cash assistance.

Therefore, this Administrative Law Judge finds no basis in the hearing record to conclude that Petitioner's ■year-old was not attending school full-time was required by Department policy in BEM 245.

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 did not act in accordance with Department policy when it closed Petitioner's cash assistance under the Family Independence Program (FIP) as of March 16, 2021.


**DECISION AND ORDER**

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. Initiate a determination of the Petitioner's eligibility for the Family Independence Program (FIP) as of March 16, 2021, and ongoing.
2. Provide the Petitioner with written notice describing the Department's revised eligibility determination.
3. Issue the Petitioner any retroactive benefits she may be eligible to receive, if any.

KS/nr

  
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Kevin Scully  
Administrative Law Judge  
Michigan Office of Administrative Hearings and Rules  
(MOAHR)

**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  
PO Box 5070  
Saginaw, MI  
48607

Saginaw County DHHS- via electronic  
mail

BSC2- via electronic mail

G. Vail- via electronic mail

B. Cabanaw- via electronic mail

**Petitioner**

██████████ - via first class mail

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██████████, MI

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