



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: June 9, 2021
MOAHR Docket No.: 21-002192
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 hearing was held via telephone conference on June 2, 2021. Petitioner participated and was represented. The Michigan Department of Health and Human Services (MDHHS) was represented by Heather Hembree, supervisor, and Priya Johnson, supervisor

ISSUE

The issue is whether MDHHS properly denied Petitioner's application requesting 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 ██████████, 2021, Petitioner applied for FAP benefits. Petitioner reported a household with ██████████, Petitioner's father (hereinafter, "Father") and ██████████, Petitioner's mother (hereinafter, "Mother"). Petitioner also reported weekly employment of 40 hours and legal residency in the United States.
2. As of April 2021, Petitioner was admitted in the United States from ██████████ for being the child of a United States citizen; his date of U.S. entry was August 17, 2017.
3. On ██████████, during an application interview, Petitioner reported that he buys and prepares food separately from Mother and Father.

4. On April 16, 2021, MDHHS denied Petitioner's application due to ineligible citizenship/residency status and/or for being an ineligible student.
5. On April 26, 2021, Petitioner requested a hearing to dispute the denial of FAP benefits.

CONCLUSIONS OF LAW

The Food Assistance Program [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. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute a denied application requesting FAP benefits. Exhibit A, pp. 3-4. It was not disputed that Petitioner applied for FAP benefits on [REDACTED], 2021.¹ Exhibit A, pp. 5-11. It was also not disputed that Petitioner only sought FAP benefits for himself.² A Notice of Case Action dated April 16, 2021, stated that Petitioner's application was denied, in part, due to Petitioner not meeting the citizenship/alien status requirements and/or failing to verify them.³

For FAP benefits, a person must be a U.S. citizen or have an acceptable alien status. BEM 225 (July 2017), p. 1. Any of the following persons are considered to have an acceptable alien status:

- United States citizens (includes those born in Puerto Rico)
- born in Canada and at least 50% American Indian
- member of American Indian tribe
- qualified military alien, spouse or child of qualified military alien,
- refugee under Section 207
- asylee under Section 208
- Cuban/Haitian entrant
- Amerasian
- victim of trafficking
- permanent resident alien with class code of RE, AM, AS, SI or SQ

¹ Petitioner actually submitted his application to MDHHS on [REDACTED], 2021, after the close of MDHHS business hours. Exhibit A, pp. 5-11. MDHHS properly registered the application for [REDACTED], 2021, based on policy requiring registration on the following business date for after-hour application submissions.

² Petitioner's application reported that he bought and prepared food with his parents, thereby implying a benefit group of three persons. During an application interview on [REDACTED], 2021, MDHHS documented that Petitioner reported that he buys and prepares food separately from his parents. Exhibit A, pp. 12-14. Per BEM 210, Petitioner would be the only potential member of the food group.

³ During the hearing, it was thought that the notice stated denial was based on a failure to verify citizenship. The notice read that Petitioner failed to meet citizenship/alien status requirements OR failed to verify them. Thus, not meeting citizenship/alien status was an official explanation for application denial.

- permanent resident alien and has I-151
- deportation withheld (under certain conditions)
- granted conditional entry under 203(a)(7)
- paroled under 212(d)(5) for at least one year (under certain conditions)
- battered aliens, if more than five years in the United States
- permanent resident alien with a class code other than RE, AM or AS, if in the United States for longer than 5 years. *Id.*, pp. 33-35.

Persons with a class code other than RE, AM or AS who entered the United States after August 22, 1996, may be eligible for FAP benefits for their first five years in the United States if any of the following circumstance are applicable:

- U.S. entry before August 22, 1996
- has 40 countable Social Security credits
- age 65 or older as of August 22, 1996, and was residing in United States on August 22, 1996
- Hmong or Laotian (with other requirements)
- currently blind or currently disabled
- under 18 years of age. *Id.*, pp. 33-35.

Petitioner's application reported a United States entry date of August 17, 2017. Exhibit A, p. 6. Given Petitioner's entry date, Petitioner has not been a U.S. resident for five years. Thus, Petitioner is not eligible for FAP benefits for being a resident longer than five years.

Petitioner testified that his green card listed a category code of F33. Petitioner basis for entry is for being the child of a United States citizen. The basis of Petitioner's entry does not qualify him for FAP benefits.

Petitioner testified that he is a citizen of [REDACTED]. Petitioner's country of citizenship is not indicative of a basis for which Petitioner could receive FAP benefits despite U.S. residency of less than five years.

The evidence established that Petitioner did not qualify for FAP benefits based on his date of entry, basis for U.S. entry, or country of citizenship. There was no evidence suggesting any other basis that Petitioner would qualify for FAP benefits. Accordingly, MDHHS properly denied Petitioner's application for FAP benefits due to Petitioner not meeting citizenship/residency requirements.

It should be noted that MDHHS also denied Petitioner for being an ineligible student. MDHHS can disqualify aged 18-49 years half-time or more college students from FAP eligibility if the student does not qualify for an exception. BEM 245 (September 2020) pp. 3-5. Working 20 or more weekly hours is an exception that allows students to potentially qualify to receive FAP benefits. *Id.* It was not disputed that Petitioner reported that he worked more than 20 hours per week. Thus, Petitioner should not have been denied FAP benefits due to being an ineligible student. However, the error was

harmless as Petitioner was not otherwise eligible for FAP benefits due to his citizenship/residency status.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly denied Petitioner's application for FAP benefits dated [REDACTED], 2021. The actions taken by MDHHS are **AFFIRMED**.

CG/jm



Christian Gardocki
Administrative Law Judge

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-Oakland-6303-Hearings
M. Holden
D. Sweeney
BSC4
MOAHR

Petitioner – Via First-Class Mail:

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