



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: February 13, 2023
MOAHR Docket No.: 23-000216
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

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 February 8, 2023. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Tom Jones, Assistant Payments Supervisor.

ISSUE

Did MDHHS properly deny Petitioner's Food Assistance Program (FAP) application?

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 ██████████ 2022, Petitioner applied for FAP for a group size of four, consisting of her children, ages ███, ███, and ███, and herself.
2. On January 13, 2023, MDHHS issued a Notice of Case Action to Petitioner, informing her that her FAP application was denied due to excess assets and denied as to her son, ██████████ (Son), for being an ineligible student (Exhibit A, pp. 12-15).
3. On January 17, 2023, MDHHS received a verbal hearing request from Petitioner disputing the denial of her FAP application (Exhibit A, pp. 3-4).

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.

Petitioner verbally requested a hearing to dispute the denial of her FAP application¹. Petitioner's FAP application was denied due to excess assets and denied as to Son for being an ineligible student.

Assets must be considered in determining eligibility for FAP benefits. Assets include cash, real property, and personal property. BEM 400 (October 2022) pp. 1-2. Asset eligibility exists when the group's countable assets are less than, or equal to, the applicable asset limit at least one day during the month being tested. BEM 400, p. 3. To be eligible for FAP benefits, the group must have assets of \$15,000 or less. BEM 400, p. 5. An asset must be available to be countable. Available means that someone in the asset group has the legal right to use or dispose of the asset. MDHHS must assume an asset is available unless evidence shows it is not available. BEM 400, p. 10. MDHHS must exclude a savings, share, checking, or draft account used solely for the expenses of a business. BEM 400, p. 24. MDHHS must disregard funds on deposit in a 529 college savings plan, interest earned on a 529 plan, and any matching funds deposited in a 529 plan. BEM 400, p. 60.

In this case, MDHHS testified that they reviewed the following accounts in determining whether Petitioner had excess assets for FAP eligibility:

- Checking Account ending x[REDACTED] at Huntington Bank, balance \$[REDACTED] as of December 16, 2022 (see Exhibit A, pp. 5-9).
- Savings Account ending x[REDACTED] at Huntington Bank, balance \$[REDACTED] as of December 16, 2022 (see Exhibit A, p. 10).
- Business Checking Account ending x[REDACTED] at Huntington Bank, balance \$[REDACTED].
- Checking Account ending x[REDACTED] at DFCU Financial, balance \$[REDACTED] as of December 12, 20219 (see Exhibit A, p. 11).
- [REDACTED] College Savings Plan at Edward Jones, balance \$[REDACTED].

¹ Clients may verbally request hearings to dispute ongoing FAP eligibility. BAM 600 (March 2021) p. 2.

Petitioner credibly testified that she no longer maintains an account at DFCU. MDHHS conceded that the DFCU account was from 2019 and should not have been counted in calculating Petitioner's assets. Petitioner testified that the checking account ending x[REDACTED] is solely for the purpose of her business and the funds are not comingled with her personal funds. Per BEM 400, this account should have been excluded in calculating Petitioner's assets. MDHHS conceded that the 529 college savings account should have been excluded from the calculation of Petitioner's assets, per BEM 400. This leaves the balance in accounts ending in x[REDACTED] and x[REDACTED], which totals to \$[REDACTED]. This is less than the FAP asset limit of \$15,000. Since Petitioner's available assets are less than the asset limit per BEM 400, MDHHS did not act in accordance with policy in denying Petitioner's FAP application due to excess assets.

Petitioner's FAP application was also denied as to Son because MDHHS concluded that he is not an eligible student. A person enrolled in a post-secondary education program may be in student status and must meet certain criteria in order to be eligible to receive FAP benefits. BEM 230B (January 2018), p. 5; BEM 245 (April 2021), p. 2. A person is in student status if he is:

- Age 18 through 49 and
- Enrolled half-time or more in a: regular curriculum at a college or university that offers degree programs, regardless of whether a diploma is required.

(BEM 245, p. 3-4).

Here, Son was [REDACTED] years old and enrolled full-time in college at the time of Petitioner's FAP application. Therefore, Son would be considered in student status.

In order for a person in student status to be eligible to receive FAP benefits, they must meet one of the following criteria:

- Receiving Family Independence Program (FIP).
- Enrolled in an institution of higher education as a result of participation in certain qualified programs as outlined below:
 - 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 under the Perkins Strengthening Career and Technical Education Act (Perkins V) and a course of study that will lead to employment.
 - Are limited to remedial courses, basic adult education, literacy, or English as a second language.
- In 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 under the Carl D Perkins Career and Technical Education

Improvement Act of 2006 (leading to employment in fields such as data entry occupations, medical and health care careers, HVAC and refrigeration, hospitality, and tourism management).

- Participating in another state or local government employment and training program.
- 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 during the regular school year.

(BEM 245, p. 4-5)

The policy also expressly provides that the Consolidated Appropriations Act of 2021, temporarily expands student eligibility for students who have an Expected Family Contribution (ECF) of \$0 in the current academic year based on the student's FAFSA. This exemption will remain effective until 30 days after the COVID-19 public health emergency is lifted. BEM 245, p. 5

Here, MDHHS testified that Son did not meet any of the criteria to be eligible to receive FAP benefits while in student status. However, MDHHS did not present evidence as to whether Son filed the FAFSA with an estimated ECF of \$0. Petitioner confirmed that Son does not meet any of the other possible criteria to receive FAP while a student. Since MDHHS failed to show that it considered Son's FAFSA eligibility, they did not act in accordance with policy when concluding that Son was not an eligible student.

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 MDHHS did not act in accordance with Department policy when it denied Petitioner's FAP application for excess assets and as to Son for being an ineligible student.

DECISION AND ORDER

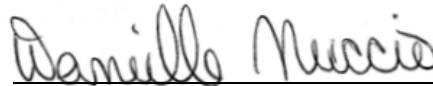
Accordingly, MDHHS' decision is **REVERSED**.

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. Reregister Petitioner's [REDACTED] 2022 FAP application;

2. Reprocess the Petitioner's FAP application for [REDACTED] 2022 ongoing in accordance with Department policy and consistent with this Hearing Decision;
3. If Petitioner is eligible for benefits, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED] 2022 ongoing;
4. Notify Petitioner of its decision in writing.

DN/mp



Danielle Nuccio
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-Electronic Mail :

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

Via-First Class Mail :

Petitioner
[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]