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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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DIRECTOR

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Date Mailed: March 24, 2023
MOAHR Docket No.: 23-000743
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 line on March 16, 2023. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Ryan Kennedy, hearings facilitator.

ISSUE

The issue is whether MDHHS properly terminated 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. As of November 2022, Petitioner was the only member of a FAP benefit group with a benefit period certified through December 2022.
2. As of November 2022, Petitioner was a full-time graduate student, aged between ██████ years, and working approximately 4 hours every two weeks.
3. On January 6, 2023, MDHHS terminated Petitioner's FAP eligibility beginning January 2023 due to Petitioner being an ineligible student.
4. As of January 2023, Petitioner may have received ongoing on-the-job training from a supervisor.

5. As of January 2023, MDHHS had not requested verification of Petitioner's job training.
6. On February 10, 2023, Petitioner requested a hearing to dispute the termination of FAP benefits.

CONCLUSIONS OF LAW

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. 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 termination of FAP benefits. Exhibit A, pp. 3-4. It was not disputed that Petitioner was the only member of his FAP group. A Notice of Case Action dated January 6, 2023, stated that FAP eligibility ended January 2023 due to Petitioner being an ineligible student. Exhibit A, pp. 21-24.

A person in student status must meet certain criteria to be eligible for assistance. BEM 245 (April 2021) p. 2. A person is in student status if he/she is the following:

- Aged 18 through 49; and
- Enrolled half-time or more in either 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. *Id.*, pp. 3-4.

Petitioner's testimony acknowledged being aged 18-49 years and enrollment more than half time in a university graduate program. Thus, MDHHS properly determined Petitioner was in student status.

Persons in student status may be eligible to receive FAP benefits under certain circumstances. Two exceptions relevant to Petitioner are the following:

- Employed for at least 20 hours per week and paid for such employment.
- Participating in an on-the-job training program.¹ 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.²

¹ MDHHS defines a "training program" as one providing education and/or instruction for the purpose of preparation for employment. Bridges Program Glossary (January 2022) p. 1.

² See BEM 245 (April 2021) pp. 4-5 for a full list of exceptions.

Concerning a student status exception for employment, MDHHS presented Petitioner's pay documents from November 2022. Exhibit A, pp. 18-19. The documents listed biweekly wages for Petitioner and a total of eight hours of employment. MDHHS properly concluded that Petitioner's average weekly employment of two hours did not qualify Petitioner to receive FAP benefits as a student.

Petitioner testified he works as a behavioral technician for a therapy center. Petitioner also testified his employment includes paid hours and additional hours that may apply towards a degree or certification testing. Petitioner further testified he needs 1,500 hours of training to qualify for a certification examination and that some of his hours at the therapy center are applicable. Petitioner estimated he completed 20-40 hours of unpaid training in February 2023. Petitioner's testimony suggested his circumstances render him eligible to receive FAP benefits.

For all programs, MDHHS is to tell the client what verification is required, how to obtain it, and the due date. BAM 130 (July 2021) p. 3. MDHHS is to use the DHS-3503, Verification Checklist (VCL), to request verification. *Id.* MDHHS is to allow the client 10 calendar days (or other time limit specified in policy) to provide the verification that is requested. *Id.*, p. 7. MDHHS is to send a negative action notice when:

- The client indicates refusal to provide a verification, or
- The time period given has elapsed and the client has not made a reasonable effort to provide it. *Id.*

MDHHS presumably requires proof of training before applying an exception to student status. Petitioner provided no documentary evidence that his unpaid training renders him eligible to receive FAP. MDHHS offered no evidence that verification of Petitioner's training was requested. Without verification or an attempt to verify, a proper remedy is for MDHHS to reprocess Petitioner's FAP eligibility subject to requesting verification of Petitioner's alleged job training.³

³ Affirming MDHHS's actions was considered. Interview documents dated December 1, 2022, included relatively thorough notes of Petitioner's circumstances. Exhibit A, pp. 11-17. The notes did not reference job training by Petitioner. It is unknown if the lack of notes is due to a failure by MDHHS to document or inquire or a Petitioner failure to report.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FAP eligibility beginning January 2023. MDHHS is ordered to commence the following actions within 10 days of the date of mailing of this decision:

(1) Reprocess Petitioner's FAP eligibility beginning January 2023 subject to the finding that MDHHS failed to consider job training as an exception to student status; and

(2) Issue notice and benefit supplements, if any, in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/mp



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-Electronic Mail :

DHHS
MDHHS-Macomb-12-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

Via-First Class Mail :

Petitioner
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