



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: April 21, 2023
MOAHR Docket No.: 23-001503
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 on April 13, 2023 via teleconference. Petitioner appeared and represented by herself. Shawnta Shorts, Assistance Payments Worker, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly determine Petitioner's Food Assistance Program (FAP) group size?

FINDINGS OF FACT

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

1. Petitioner was an ongoing recipient of FAP benefits for a group of two.
2. On December 24, 2022, MDHHS sent Petitioner a Notice of Case Action indicating that Petitioner's FAP benefit rate decreased to \$146.00 per month for a FAP group of one, effective February 1, 2023 ongoing (Exhibit A, p. 7). MDHHS excluded Petitioner's son, [REDACTED] (Son), from the FAP group because he did not meet program requirements (Exhibit A, p. 8). MDHHS determined that Son was an ineligible student (Exhibit A, p. 9).
3. On March 16, 2023, Petitioner filed a Request for Hearing to dispute MDHHS' determination regarding her FAP group size and the reduction in her FAP benefits (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. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, MDHHS determined that Son was an ineligible student, removed him from Petitioner's FAP group and reduced Petitioner's FAP benefit rate.

For the purposes of FAP, beneficiaries are in student status if they are 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, or a regular curriculum at a college or university that offers degree programs, regardless of whether a diploma is required. BEM 245 (April 2021), pp. 3-4. BEM 245 provides:

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

- Receiving [Family Independence Program] (FIP) benefits.
- 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 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.
- 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.

Note: The Consolidated appropriations act of 2021, temporarily expands student eligibility for students who have an Expected Family Contribution of \$0 in the current academic year based on the student's Free Application for Federal Student Aid (FAFSA). This exemption will remain effective until 30 days after the COVID-19 public health emergency is lifted.¹

- 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.

¹ The Secretary of the Department of Health and Human Services renewed the federal COVID-10 Public Health Emergency on February 9, 2023. U.S. Department of Health & Human Services, Declarations of a Public Health Emergency <<https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx>> (accessed April 20, 2023); The COVID-19 Public Health Emergency is expected to expire on May 11, 2023. U.S. Department of Health & Human Services, COVID-19 Public Health Emergency (PHE) <<https://www.hhs.gov/coronavirus/covid-19-public-health-emergency/index.html>> (accessed April 20, 2023).

Note: The Consolidated Appropriations Act of 2021, temporarily expands student eligibility under state or federally funded work study programs for individuals who are deemed as eligible to participate in work study, as determined by the institution of higher learning, but may not be actively participating in work study hours. This exemption will remain effective until 30 days after the COVID-19 public health emergency is lifted.

- 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.

BEM 245 (April 2021), pp. 3-6.

MDHHS must obtain verification when it is required by policy or information is unclear or incomplete. BAM 130 (January 2022), p. 1. Verification is usually required at application/redetermination and when a reported change affects eligibility or benefit level. *Id.* To obtain verification, MDHHS must tell the client what verification is required, how to obtain it and the due date. *Id.*, p. 3. The client must obtain the requested verification, but the local office must assist the client if they need and request help. *Id.*, p. 3. If neither the client nor the local office can obtain verification despite a reasonable effort, MDHHS must use the best available information. *Id.* If no information is available, MDHHS must use its best judgement. *Id.* MDHHS allows the client ten calendar days to provide the requested verification. *Id.*, p. 7. Verifications are considered timely if received by the date that they are due. *Id.* MDHHS sends a negative action notice when the client indicates a refusal to provide the requested verification, or the time period given on the VCL has lapsed and the client has not made a reasonable effort to provide it. *Id.* Before making a final determination regarding eligibility, MDHHS must give clients a reasonable opportunity to resolve any discrepancies between their statements and information from another source. *Id.*, p. 9.

Here, MDHHS determined that Son was an ineligible student because he was ■ years old, enrolled in college half-time or more, and not working. It further testified that it requested financial aid information from Petitioner to determine whether Son met the criteria for an eligible student in BEM 245. However, it acknowledged that it did not send Petitioner a VCL for this information, contrary to policy. Petitioner testified that she sent information from Son's college to MDHHS and that she told MDHHS that he was unable

to work due to an injury. MDHHS testified that the document Petitioner sent from the school was insufficient because it did not include his financial aid information. MDHHS should have sent Petitioner a VCL for the specific documents that would have enabled it to determine whether Son was eligible for work study or if his Expected Family Contribution was \$0, based on his FAFSA.

MDHHS was required to send a VCL to inform Petitioner of what specific information was needed, and it failed to do so here. The record shows that Petitioner was attempting to comply with MDHHS' verbal request for information by sending in the letter from Son's college. Additionally, Petitioner stated that Son was physically unfit for employment due to an injury, which is one of the criteria listed in BEM 245 to obtain eligible student status. No evidence was presented that MDHHS made a determination on this factor or attempted to verify this information.

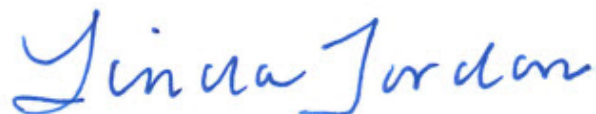
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it excluded Son from Petitioner's FAP group and reduced Petitioner's FAP benefit rate.

DECISION AND ORDER

Accordingly, MDHHS decision is **REVERSED**.

MDHHS 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. Determine whether Son was an eligible student under BEM 245 from February 1, 2023 ongoing, requesting additional information, if necessary;
2. If Son is an eligible student, add Son to Petitioner's FAP group and redetermine Petitioner's household FAP benefit rate, from February 1, 2023 ongoing;
3. Issue supplements to Petitioner for any FAP benefits that she was eligible to receive but did not, from February 1, 2023 ongoing; and
4. Notify Petitioner of its decision in writing.



LJ/ml

Linda Jordan
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

Denise McCoggle
Wayne-Greydale-DHHS
27260 Plymouth Rd
Redford, MI 48239

MDHHS-Wayne-15-Greydale-Hearings@michigan.gov

Interested Parties

BSC4
M Holden
D Sweeney
MOAHR

Via First Class Mail :

Petitioner

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