



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: May 4, 2023
MOAHR Docket No.: 23-001646
Agency No.: [REDACTED]
Petitioner: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 April 25, 2023, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Becky Fraser and Patricia McKenzie. Isaac Slajus from the Office of Inspector General also appeared and testified for the Department. Department Exhibit 1, pp. 1-16 was received and admitted.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case due to excess income?

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 a recipient of FAP benefits.
2. On March 1, 2023, a FEE referral was made regarding group composition of Petitioner's household.
3. The father of Petitioner's child, [REDACTED] [REDACTED] lists Petitioner's address as his address for his employer and the secretary of state.
4. On March 9, 2023, Petitioner told the OIG investigator and testified at hearing that [REDACTED] [REDACTED] spends approximately one night per month sleeping at Petitioner's home and that he does not reside there. Petitioner stated that [REDACTED] [REDACTED] is homeless.

5. [REDACTED] [REDACTED] was not at Petitioner's home when the OIG investigator visited Petitioner's home on March 9, 2023.
6. On March 13, 2023, Notice of Case Action was sent to Petitioner informing her that her FAP case was closing due to excess income, after the income of [REDACTED] [REDACTED] was added to the budget, effective April 1, 2023.
7. On March 20, 2023, Petitioner requested hearing disputing the closure of FAP benefits.

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.

Parents and Children

Children include natural, step and adopted children.

Parents and their children **under** 22 years of age who live together **must** be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212

Living With

Living with means sharing a home where family members usually sleep and share **any** common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share **only** an access area such as an entrance or hallway or non-living area such as a laundry room are **not** considered living together. BEM 212

In this case, Petitioner testified at hearing that [REDACTED] [REDACTED] is homeless and lists her address with the secretary of state and other places as a matter of convenience. Petitioner testified that [REDACTED] [REDACTED] spends approximately one night per month sleeping at her home. Petitioner testified that her understanding was that Mr. [REDACTED] was not living with her if he spent less than 50% of nights sleeping at her home. Mr. [REDACTED] has a child support obligation for the minor child he has with Petitioner.

The Department argued that [REDACTED] [REDACTED] sleeping one night a Petitioner's home coupled with his using Petitioner's address as his address was sufficient to conclude

that Mr. [REDACTED] resides with Petitioner pursuant to BEM 212. At hearing, Agent Slajus made reference to an email that states that sleeping one night was sufficient to establish parents were living together but he was asked about whether specific provisions in Department policy or the federal regulations supported that contention, and he was not able to cite any policy or regulation.

BEM 212 states that “parents and their children under 22 years of age who live together must be in the same group”. BEM 212 further states that “living with means sharing a home where family members usually sleep and share and common living quarters such as a kitchen, bathroom, bedroom or living room.” Petitioner credibly testified that [REDACTED] [REDACTED] does not reside with her and in fact he was not present when Agent Slajus came to the home on March 9, 2023. The Department did not present sufficient evidence to establish that [REDACTED] [REDACTED] “usually sleeps” at Petitioner’s residence. [REDACTED] [REDACTED] using Petitioner’s address to receive mail and him sleeping in the home approximately one night per month is not sufficient to establish that he resides with Petitioner. BEM 212

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it included [REDACTED] [REDACTED] in Petitioner’s household and closed her FAP case.


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. Reinstate Petitioner’s FAP case going back to the date of closure.
2. Issue a supplement for any missed FAP benefits.

AM/nr



Aaron McClintic
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
Kimberly Kornoelje
Kent County DHHS
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Hearings@michigan.gov

Interested Parties
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M. Holden
D. Sweeney
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Via-First Class Mail :

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