



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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██████████, MI ██████████

Date Mailed: May 11, 2023
MOAHR Docket No.: 23-001930
Agency No.: ██████████
Petitioner: ██████████

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 May 3, 2023 via teleconference. ██████████ Petitioner's Authorized Hearing Representative (AHR), appeared on behalf of Petitioner and Petitioner's husband, ██████████ (Husband). Laurie Turner, Eligibility Specialist, appeared on behalf of the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUES

1. Does the Michigan Office of Administrative Hearings and Rules (MOAHR) have jurisdiction to address the decisions to deny Petitioner's Food Assistance Program (FAP) applications dated October 17, 2022 and November 16, 2022?
2. Did MDHHS properly process Petitioner's February 11, 2023 FAP application and correctly determine her household size?
3. Did MDHHS properly determine that Husband was eligible for Emergency Services Only (ESO) Medicaid (MA)?

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 October 17, 2022, Petitioner applied for FAP (Exhibit A, p. 60).
2. On November 15, 2022, MDHHS sent Petitioner a Notice of Case Action indicating that the FAP application dated October 17, 2022 was denied for failure to verify

Husband's alien status (Exhibit A, pp. 20-21). The notice indicated that the deadline to appeal was February 13, 2023 (Exhibit A, p. 21).

3. On November 16, 2022, Petitioner applied for FAP (Exhibit A, p. 53).
4. On November 29, 2022, MDHHS sent Petitioner a Verification Checklist (VCL) requesting proof of immigration/alien status. The proofs were due by December 9, 2022.
5. On December 7, 2022, Petitioner submitted copies of her Legal Permanent Resident (LPR) card ("green card") and Husband's green card to MDHHS.
6. On December 15, 2022, MDHHS sent Petitioner a Notice of Case Action denying the November 16, 2022 application for FAP (Exhibit A, p. 15). The notice indicated that the deadline to appeal was March 15, 2023 (Exhibit A, p. 16).
7. On February 11, 2023, Petitioner applied for FAP and MA benefits on behalf of herself and Husband (Exhibit A, p. 45).
8. On February 14, 2023, MDHHS interviewed Petitioner by phone (Exhibit A, p. 67).
9. On February 16, 2023, MDHHS approved Petitioner for FAP for a household of one, effective February 11, 2023 (Exhibit A, p. 1).
10. On March 19, 2023, Petitioner's AHR filed a Request for Hearing to dispute MDHHS' determinations regarding her FAP applications and MA benefits (Exhibit A, pp. 3-5).

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) 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.

MA is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services)

administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

October 17, 2022 and November 16, 2022 FAP Applications

The first issue concerns whether the Michigan Office of Administrative Hearings and Rules (MOAHR) has jurisdiction to review the November 15, 2022 denial of Petitioner's October 17, 2022 FAP application, and the December 15, 2022 denial of Petitioner's November 16, 2022 FAP application. For the reasons described below, MOAHR does not have jurisdiction to review those determinations because the request for hearing was not filed in a timely manner.

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 792.10101 to R 792.10137 and R 792.11001 to R 792.11020. Rule 792.11002(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because his or her claim for assistance is denied or is not acted upon with reasonable promptness, has received notice of a suspension or reduction in benefits, or exclusion from a service program, or has experienced a failure of the agency to take into account the recipient's choice of service.

A client's request for hearing must be in writing and signed by an adult member of the eligible group, adult child, or authorized hearing representative (AHR). BAM 600 (March 2021), p. 2. Moreover, policy provides that a request for hearing must be received in the MDHHS local office within 90 days of the date of the written notice of case action. *Id.*, p. 6

In the present case, MDHHS sent Petitioner a Notice of Case Action advising her of its decision to deny the October 17, 2022 application for FAP benefits on November 15, 2022 (Exhibit A, p. 20). The notice also stated that if Petitioner disagreed with the decision, she must submit a request for appeal within 90 days from the mailing date of the notice, or February 13, 2023 (Exhibit A, p. 21). The record shows that Petitioner did not file a request for hearing to contest MDHHS' determination until March 19, 2023. Because Petitioner's request for hearing was not filed within 90 days from the date the Notice of Case Action was mailed, the undersigned Administrative Law Judge (ALJ) lacks jurisdiction to review the denial of the October 17, 2022 FAP application. Similarly, MDHHS sent Petitioner a Notice of Case Action on December 15, 2022 indicating that the FAP application dated November 16, 2022 was denied (Exhibit A, p. 15). That notice informed her that the appeal deadline was March 15, 2023 (Exhibit A, p. 16). MDHHS received Petitioner's request for hearing on March 19, 2023, which makes the appeal on that issue untimely as well.

Petitioner's hearing request regarding the November 15, 2022 and December 15, 2022 FAP denials was not filed timely and is, therefore, **DISMISSED** due to lack of jurisdiction.

February 11, 2023 FAP Application

The second issue in this case is whether MDHHS properly determined that Husband was disqualified from receiving FAP benefits when it approved Petitioner's February 11, 2023 FAP application for a FAP group of one. MDHHS alleged that Husband was not eligible for FAP due to his immigration status and the "five-year ban" explained in more detail below.

To qualify for FAP benefits, a person must be a U.S. citizen or have an acceptable non-citizen status. BEM 225 (October 2022), p. 1. An acceptable status includes persons who have lived in the U.S. as a "qualified alien" for at least five years since their date of entry (five-year ban). *Id.*, p. 38. A qualified alien is defined as an alien who is (i) lawfully admitted for permanent residence under the Immigration and Nationality Act (INA); (ii) granted asylum under Section 208 of the INA; (iii) a refugee who is admitted to the U.S. under Section 207 of the INA (this includes Iraqi and Afghan special immigrants); (iv) paroled into the U.S. under Section 212(d)(5) of the INA for a period of at least one year; (v) an alien whose deportation is being withheld under Section 241(b)(3) or 243(h) of the INA; (vi) granted conditional entry pursuant to Section 203(a)(7) of the INA; (vii) a Cuban/Haitian entrant; or (viii) An alien who has been battered or subjected to extreme cruelty in the U.S. by a U.S. citizen or legal permanent resident spouse or parent, or by a member of the spouse's or parent's family living in the same household, or is the parent or child of a battered person. BEM 225, pp. 3-4. 7 CFR 273.4(a)(5)(6). Certain individuals are exempt from the five-year ban. See BEM 225, pp. 10-11.

Here, MDHHS determined that Petitioner qualified for FAP because she was admitted to the U.S. as a refugee on November 30, 2016, and therefore, had an acceptable non-citizen status (See Exhibit A, p. 90). However, MDHHS determined that Husband did not qualify for FAP because he was admitted to the U.S. on November 12, 2022, and thus, did not satisfy the five-year ban (See Exhibit A, p. 92). Further, MDHHS argued, Husband did not have an immigration status that would exempt him from the five-year ban. The immigration category listed on his green card is FX1, which is a family-based status for a spouse of an LPR. At the hearing, AHR did not dispute MDHHS' determination regarding Husband's immigration status and did not provide additional evidence to show that he was exempt from the five-year ban.

Accordingly, MDHHS properly determined that Petitioner qualified for FAP benefits because she had an acceptable non-citizen status and excluded Husband from the FAP group because he did not satisfy the five-year ban. Other group members who are living with a person disqualified from receiving benefits due to non-citizen status can still qualify for program benefits. BEM 225, p. 1. However, the disqualified person's assets and income may have to be considered based on the program requested. *Id.*

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 satisfied its burden of showing that it acted in accordance with Department policy when it approved Petitioner for FAP benefits for a household of one based on the February 11, 2023 FAP application.

Medicaid (MA) Emergency Services Only (ESO)

The final issue in this case involves whether MDHHS properly determined that Husband qualified for Emergency Services Only (ESO) MA, instead of full-coverage MA provided under a different MA category.

Citizenship and non-citizen status is not an eligibility factor for ESO MA. BEM 225, p. 2. To be eligible for full-coverage MA, a person must be a U.S. citizen or a non-citizen admitted to the U.S. under a specific immigration status. *Id.* An acceptable non-citizen status for full-coverage MA includes LPRs with class codes RE, AS, SI or SQ on the I-551 (former refugee or asylee); refugees admitted under INA Section 207; granted asylum under INA Section 2018; Cuban/Haitian entrants; Amerasian under P.L. 100-202 (class code AM on the I-551); Victims of trafficking under P.L. 106-386 of 2000; or Non-citizens whose deportation (removal) is being withheld under INA Sections 241(b)(3) or 243(h). *Id.*, p. 7. Additionally, a non-citizen may qualify for MA if admitted into the U.S. as an LPR with class code on the I-551 other than RE, AM or AS, or is a non-citizen paroled into the U.S. for at least one year under INA Section 212(d)(5). *Id.*, pp. 7-8. However, for both of those situations, MA is limited to ESO for the first five years in the U.S, unless the person was admitted into the U.S. before August 22, 1996. *Id.*

In this case, MDHHS testified that Husband was approved for full-coverage Health Michigan Plan (HMP) MA in November 2022. However, this approval was in error. When it discovered that it had incorrectly approved Husband for HMP, it terminated the HMP coverage and enrolled Husband in ESO MA, beginning February 1, 2023. AHR disputed the loss of HMP MA coverage but did not present additional information to support that Husband had satisfied the five-year ban or that he had an immigration status that would exempt him from the five-year ban. Accordingly, MDHHS has satisfied its burden of showing that it acted appropriately by approving Husband for ESO MA.

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 acted in accordance with Department policy when it determined that Husband qualified for ESO MA only.

DECISION AND ORDER

Petitioner's hearing request regarding the denial of the October 17, 2022 and November 16, 2022 FAP applications is **DISMISSED** for lack of jurisdiction.

MDHHS' decision to approve Petitioner's February 11, 2023 FAP application for a household of one is **AFFIRMED**.

MDHHS' decision to approve Husband for ESO MA, effective February 1, 2023, is **AFFIRMED**.

IT IS SO ORDERED.



LJ/tm

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
Tara Roland 82-17
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Interested Parties

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BSC4

Via-First Class Mail :

Petitioner

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Authorized Hearing Rep.

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