



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: January 16, 2024
MOAHR Docket No.: 23-008582
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 January 10, 2024. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Valarie Foley, 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 2023, Petitioner was an ongoing recipient of FAP benefits with a benefit period certified through the end of the month.
2. As of November 2023, Petitioner reported to MDHHS a household which included three children. One of the children, [REDACTED] [REDACTED] (hereinafter, "Child1"), was a [REDACTED]-year-old full-time college student.
3. As of November 2023, Petitioner received \$ [REDACTED] in weekly gross wages. Child1's twin (hereinafter, "Child2") received \$ [REDACTED] in gross weekly benefits.

4. As of November 2023, Child1 was none of the following: employed or self-employed for 20 weekly hours, involved in work study, participating in activities under the Job Training Partnership Act (JTPA), receiving cash benefits, disabled, a parent, or a caretaker to a FAP benefit group member.
5. On November 15, 2023, MDHHS terminated Petitioner's FAP eligibility beginning December 2023 due to Petitioner's alleged failure to verify income.
6. On November 29, 2023, Petitioner requested a hearing to dispute the termination of FAP benefits.
7. On November 30, 2023, MDHHS reprocessed Petitioner's FAP eligibility and determined that Petitioner had excess income for a benefit group of three persons.

CONCLUSIONS OF LAW

The 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 the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. FAP 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. 3-5. A Notice of Case Action dated November 15, 2023, stated that MDHHS ended Petitioner's FAP eligibility beginning December 2023 due to a failure to verify income. Exhibit A, pp. 7-11. MDHHS testimony acknowledged that the termination of FAP benefits due to a failure to verify income was improper. MDHHS corrected the termination by reprocessing Petitioner's FAP eligibility. A Notice of Case Action dated November 30, 2023, determined Petitioner had excess gross income for FAP benefits for a benefit group of three persons which included Petitioner, Child2, and a minor child. Exhibit A, pp. 12-15. MDHHS excluded Child2's twin brother, Child1, from the benefit group due to student status.

A person in student status must meet certain criteria to be eligible for FAP benefits. A person is in student status if he/she is:

- Age 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. BEM 245 (April 2021) pp. 3-4.

It was not disputed that Child1 was 18-49 years old and enrolled as a full-time college student. The evidence established that MDHHS properly determined Child1 to be in student status.

For a person in student status to be eligible for FAP benefits, he or she must meet one of the following criteria:

- Receiving FIP benefits
- Enrolled in an institution of higher education as a result of participation in:
 - A JTPA program.
 - A program under section 236 of the Trade Readjustment Act of 1974 (U. S. C. 2296).
 - Another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning 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 (i.e., work study).
- 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 aged 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. 3-5.

During the hearing, all of the above exceptions to student status were discussed with Petitioner; Petitioner acknowledged that Child1 met none of the exceptions. The evidence established that Child1 was in student status and met no exceptions. Thus, MDHHS properly determined Child1 was an ineligible group member and that Petitioner's FAP benefit group consisted of three persons. The analysis will proceed to determine if MDHHS properly denied FAP benefits to the three-person benefit group due to excess gross income.

To be eligible for FAP benefits, a non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550 (January 2017) p. 1. An SDV group is one with a senior (a person over the age of 60 years), disabled, or disabled veteran. *Id.*

A traditionally categorically eligible FAP group is one whose members are all Family Independence Program (FIP) and/or State Disability Assistance (SDA) and/or Supplemental Security Income recipients (SSI). BEM 213 (January 2023) p. 1. Non-traditionally categorically eligible groups are categorically eligible based on Domestic Violence Prevention Services (DVPS) but an income and asset test are required. *Id.*, p. 2. Categorical FAP groups with three or more members that exceed the gross and/or 100 percent net income limit, but whose gross income is at or below 200% of the Federal Poverty Level (FPL) and who meet the asset limit and all other FAP eligibility requirements may be eligible for benefits as low as \$1 as determined by the Food Assistance Issuance Tables in RFT 260. *Id.*, p. 4.

There was no evidence that any household members were recipients of FIP, SDA, or SSI. There was also no evidence that any members of Petitioner's benefit group were senior, disabled, or disabled veterans. As a non-SDV and non-traditional categorically eligible FAP group, the benefit group is subject to gross income testing.

Petitioner submitted to MDHHS four pay documents for Child2 from October 2023. Exhibit A, pp. 16-19. Each document listed gross weekly income of \$█. *Id.* Petitioner submitted wage documents to MDHHS listing \$█ in gross weekly income for himself. Exhibit A, pp. 20-23. For FAP benefits, MDHHS generally counts gross wages.² BEM 501 (July 2017), p. 7. MDHHS converts stable or fluctuating weekly income to a monthly amount by multiplying the average income by 4.3. BEM 505 (October 2023) p. 8. Multiplying Petitioner's and Child2's average weekly income by 4.3 results in a total gross monthly income of \$█ (dropping cents).

The monthly gross income limit for a three-person non-traditional categorically eligible FAP group is \$4,144.³ RFT 250 (October 2023) p. 1. Petitioner's benefit group's countable gross income of \$4,231 exceeded the gross income limit. Thus, MDHHS properly terminated Petitioner's FAP eligibility beginning December 2023.

¹ Generally, MDHHS factors the past 30 days of non-child support income to project the group's income. BEM 505 (October 2023) p. 6. Petitioner testified that Child2's income has since decreased. The testimony is relevant if Petitioner were to reapply; however, there was no evidence that a weekly gross income of \$484 was unrepresentative of future earnings at the time that MDHHS terminated benefits (see BEM 505).

² Exceptions to using gross wages include the following: earned income tax credits, flexible benefits, striker earnings, student disregards, and census worker earnings. BEM 501 (July 2017), p. 7. None of these exceptions apply to the present case.

³ The Notice of Case Action dated October 26, 2023, stated that Petitioner exceeded the gross income limit of \$2,694. Exhibit A, p. 13. A gross income limit of \$2,694 is 130% of the FPL and is applicable when a benefit group is not categorically eligible. Presumably, MDHHS determined Petitioner's FAP eligibility based on 200% of the FPL, and in compliance with policy, determined that the group was not categorically eligible because the group's income exceeded 200% of the FPL.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's FAP eligibility beginning December 2023. The actions taken by MDHHS are **AFFIRMED**.

CG/nr



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


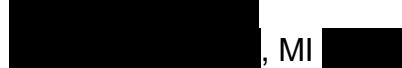
Via-Electronic Mail :

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