



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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 24, 2024
MOAHR Docket No.: 23-009206
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Caralyce M. Lassner

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 by telephone on January 17, 2024. The Petitioner represented herself. The Department of Health and Human Services (Department) was represented by Chaka Rice, Payment Assistance Specialist, and Corlette Brown, Hearing Facilitator.

ISSUE

Did the Department properly deny Petitioner's Food Assistance Program (FAP) application in determining Petitioner failed the pre-strike financial test?

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 [REDACTED] 2023 Petitioner submitted an application for Food Assistance. (Exhibit A, pp. 6-12)
2. Petitioner disclosed her status as a striking worker in her application. (Exhibit A, pp. 9-10)
3. On October 26, 2023, the Department issued a Notice of Case Action denying Petitioner's application for FAP benefits. (Exhibit A, pp. 13-16)

4. On December 12, 2023, the Department received Petitioner's detailed Request for Hearing disputing the denial of her application. (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. 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.

Petitioner requested a hearing to dispute denial of her application for FAP. The Department denied Petitioner's FAP application based on Petitioner's failure of the pre-strike financial test required by policy.

BEM 227 sets forth the eligibility standards for striking workers. BEM 227 (July 2013), pp. 1-3. "A striker is a person involved in an employee strike, concerted stoppage, slowdown or interruption of work activities or employment operations. This includes a stoppage when a collective bargaining agreement expires." BEM 227, p. 1. FAP groups which include members who are on strike are eligible for FAP only if they were eligible for or receiving FAP before the strike and continue to be eligible during the strike. BEM 227, p. 1. The Department must determine the pre-strike non-financial eligibility as of the day before the strike and, if those conditions are satisfied, then evaluate current nonfinancial eligibility. BEM 227, p. 1. Then, the Department must calculate the fiscal group's pre-strike income and determine if the group is income eligible before considering current income eligibility. BEM 227, p. 2.

In this case, Petitioner submitted an application for FAP benefits through MiBridges on [REDACTED] 2023. In her application, Petitioner disclosed her status as a striking worker. (Exhibit A, pp. 9-10). Both the Department and Petitioner agree that Petitioner was interviewed (Exhibit A, pp. 1, 4). Petitioner testified that she provided all requested information, which is consistent with her request for hearing. (Exhibit A, p. 4)

The October 26, 2023 Notice of Case Action showed, and the Department testified at the hearing, that Petitioner's application was denied because Petitioner failed the pre-strike financial test. The hearing summary prepared by the Department provided a blanket statement that Petitioner failed the "prestrike [sic] financial test" with no further explanation as to how or why Petitioner failed the test. (Exhibit A, p. 1). In addition, none of the documents addressed the calculation of Petitioner's pre-strike income. The

only document provided about Petitioner's income, from any point in time, was the information provided by Petitioner as part of Petitioner's original application for benefits. (Exhibit A, p. 9). Petitioner testified during the hearing that the income she disclosed on her application was based on her strike pay and not her pre-strike income.

The Department did not provide clear information or evidence regarding the basis for the determination that Petitioner failed the pre-strike financial test, including whether pre-strike paystubs or other income verification were received, or whether a calculation was performed. The Department did not provide clear information or evidence in support of its decision including which financial test Petitioner failed or what calculations were performed in support of its denial of Petitioner's application. The Department did not provide income verifications or budgets related to Petitioner's FAP eligibility. The Department did not clearly articulate the basis for denying Petitioner's application. The Department did recite sections of policy but stopped short of explaining how the policy was applied to Petitioner's situation.

The Department bears the burden of showing that its challenged actions were taken in compliance with law and policy. To do so, the Department must at least explain why it took the action and provide documentary evidence of the action taken.

The Petitioner has the right to contest a Department decision affecting eligibility or benefit levels, including denial of program benefits, when the client believes the decision is incorrect. BAM 600 (March 2021), p. 1. When a hearing request is filed, the matter is transferred to MOAHR for a hearing before an Administrative Law Judge. In preparation for the hearing, the Department is required to send to MOAHR and the client a hearing summary, which includes, among other things:

- a clear, concise statement of the case action taken,
- a chronological summary of events,
- facts which led to the action,
- identification of any verifications supporting the action taken, and
- citations to relevant law and policy.

BAM 600, pp. 10, 19, and 21.

Additionally, a hearing packet must be prepared to send with the hearing summary that must include, among other things, the relevant notice of case action and a copy of all documents the Department intends to offer to support its action. BAM 600, pp. 10, 19, 21, and 32. The Department's evidence in this case failed to support its finding that Petitioner failed the pre-strike financial test. Based on the lack of information and evidence, the Department has failed to show that it acted in accordance with Department policy.

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 denied Petitioner's application for FAP benefits based on failure of the pre-strike financial test.

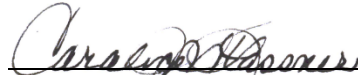
DECISION AND ORDER

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. Redetermine Petitioner's eligibility for FAP benefits based on her actual pre-strike income in accordance with policy;
2. Issue supplements for any benefits not previously received/issued that Petitioner is eligible to receive from [REDACTED] 2023, ongoing; and,
3. Notify Petitioner of its decision in writing.

CML/ml



Caralyce M. Lassner
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

Keisha Koger-Roper
Wayne-District 31 (Grandmont)
17455 Grand River
Detroit, MI 48227

MDHHS-Wayne-31-Grandmont-Hearings@Michigan.gov

Interested Parties

BSC4
M Holden
B Cabanaw
N Denson-Sogbaka
MOAHR

Via First Class Mail:

Petitioner

[REDACTED]
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