



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

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Date Mailed: June 5, 2024
MOAHR Docket No.: 24-004112
Agency No.: ██████████
Petitioner: ██████ ██████

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 May 16, 2024, from Lansing, Michigan. ██████ ██████ the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by Aley Haught, Assistance Payments Supervisor (APS), and Lyslie Chappel, Eligibility Specialist (ES). ██████ ██████ friend, provided interpretation services during the hearing proceeding.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-36.

ISSUE

Did the Department properly determine Petitioner's eligibility for the Food Assistance Program (FAP)?

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 February ██████ 2024, Petitioner applied for FAP and other benefits. Petitioner reported she was not a US National/Citizen and she had an eligible immigration status. Petitioner provided an Alien Number, date of US entry of February ██████ 2024, and indicated her document was an Order of Release on Recognizance. Petitioner reported that she is a refugee from the Democratic Republic of Congo. (Exhibit A, pp. 5-12)

2. During a February ■ 2024 interview, Petitioner reported she just arrived in the US January 31, 2024 from the Democratic Republic of Congo. (Exhibit A, pp. 13-19)
3. On February ■ 2024, Petitioner provided a Republic of Kenya Refugee ID Card, and documentation from the US Department of Homeland Security including a February 1, 2024 Order of Release on Recognizance, and a Notice to Appear. (Exhibit A, pp. 20-30)
4. On February ■ 2024, a Notice of Case Action was issued to Petitioner, in part stating FAP was denied based on Petitioner not having an eligible citizenship or immigration status. (Exhibit A, pp. 31-32)
5. On April 8, 2024, Petitioner requested a hearing contesting the Department's determination. (Exhibit A, p. 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.

BEM 225 addresses citizenship/non-citizen status:

CITIZENSHIP/ NON-CITIZEN STATUS

All Programs

Persons listed under the program designations in Acceptable Status meet the requirement of citizenship/non-citizen status. Eligibility may depend on whether or not the person meets the definition of Qualified Non-citizen.

QUALIFIED NON-CITIZEN

All Programs

The definition of qualified non-citizen includes specific non-citizen statuses, but **not** all non-citizen statuses. This definition is used in several of the acceptable non-citizen statuses, in conjunction with other criteria. Not all acceptable non-citizen statuses require that the person be a qualified non-citizen.

Qualified non-citizen means a non-citizen who is:

- Lawfully admitted for permanent residence under the INA.
- Granted asylum under Section 208 of the INA.
- A refugee who is admitted to the U.S. under Section 207 of the INA; this includes Iraqi and Afghan special immigrants.
- Paroled into the U.S. under Section 212(d)(5) of the INA for a period of at least one year.
- A non-citizen whose deportation is being withheld under Section 241(b)(3) or 243(h) of the INA.
- Granted conditional entry pursuant to Section 203(a)(7) of the INA.
- A Cuban/Haitian entrant.
- A non-citizen 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, January 1, 2024, pp. 3-4.

ACCEPTABLE STATUS

FIP and FAP

- U.S. citizen (including persons born in Puerto Rico).

Children of U.S. citizens born abroad must meet the following criteria:

- Two U.S. citizen parents in wedlock: One of the parents **MUST** have resided in the U.S. prior to the child's birth.
- Child of one U.S. citizen and one non-citizen parent in wedlock: the U.S. citizen was physically present in the U.S. for time period required by law at the time of the child's birth:
 - Birth on or after 11/14/1986: U.S. citizen's required time period is five years; two of the years must be after the age of 14.
 - Birth between 12/24/1952 and 11/13/1986: U.S. citizen's required time period is 10 years; five of the years must be after the age of 14.
- Child of only U.S. citizen father out of wedlock must meet each of the following criteria:

- A blood relationship between the applicant and the father is established by clear and convincing evidence.
- The father had the nationality of the U.S. at the time of the applicant's birth.
- The father (unless deceased) had agreed in writing to provide financial support for the person until the applicant reached the age of 18.
- While the person is under the age of 18:
 - Applicants are legitimated under the law of their residence or domicile.
 - Father acknowledges paternity of the person in writing under oath.
 - The paternity of the applicant is established by adjudication court.
- Child of U.S. citizen mother out of wedlock: the mother was a U.S. citizen at the time of the child's birth and the mother had previously been physically present in the U.S. or one of its outlying possessions for a continuous period of one year

All Programs

- U.S. citizens (including persons born in Puerto Rico).
- See Exhibit IV, HOW TO BECOME A UNITED STATES CITIZEN, in this item.
- Persons born in Canada who are at least 50 percent American Indian.
- Member of a federally acknowledged American Indian tribe.
- **Qualified military** non-citizen--a qualified non-citizen on active duty in, or veteran honorably discharged from, the U.S. armed forces. Active duty must not be for training, such as two weeks of active duty training for National Guard. Discharge must not have been due to non-citizen status.
Veteran means a person who either:
 - Served in the active military, naval or air service for the shorter of 24 months of continuous active duty or the full period for which he or she was called to active duty.
 - Died while in the active military, naval or air service.
 - Served in the military forces of the Commonwealth of the Philippines while such forces were in the service of the armed forces of the U.S. during the period from July 26, 1941, through June 30, 1946.
 - Served in the Philippine Scouts under Section 14 of the Armed Forces Voluntary Recruitment Act of 1945.
- A qualified non-citizen spouse and unmarried qualified non-citizen dependent child of a qualified military non-citizen.

Note: Dependent child is a child claimed as a dependent on the qualified military non-citizen's federal tax return and under 18, or under age 22 and a student regularly attending school.

Spouse includes the unremarried surviving spouse of a deceased qualified military non-citizen. The marriage must fulfill one of the following:

- The spouse was married to the veteran for one year or more.
- A child was born to the spouse and veteran during or before the marriage.
- The spouse was married to the veteran within the 15-year period following the end of the period of service in which an injury or disease causing the death of the veteran was incurred or aggravated.
- Holder of one of the following immigration statuses:
 - Lawful permanent resident with class code RE, AS, SI or SQ on the I-551 (former refugee or asylee).

Note: For FAP, clients who enter the U.S. with one of the following categories are eligible for the first seven years. If they adjust to another category which requires them to meet the five-year requirement, they are still eligible for the first seven years.
 - Refugee admitted under INA Section 207.
 - Granted asylum under INA Section 208.
 - Cuban/Haitian entrant.
 - Amerasian under P.L. 100-202 (class code AM on the I-551).
 - Victim of trafficking under P.L. 106-386 of 2000; see VICTIMS OF TRAFFICKING in this item.
 - Non-citizen whose deportation (removal) is being withheld under INA Sections 241(b)(3) or 243(h).
 - **For FIP**, eligibility is limited to five years following the date of the withholding order unless the non-citizen is a qualified military non-citizen or the spouse or dependent child of a qualified military non-citizen.

FIP, SDA and MA

- Non-citizen admitted into the U.S. with one of the following immigration statuses:
 - Lawful Permanent Resident with a class code on the I-551 other than RE, AM or AS.
 - Non-citizen paroled into the U.S. for at least one year under INA Section 212(d)(5).

Exception (both statuses above): The eligibility of a non-citizen admitted into the U.S. on or after August 22, 1996, with one of these statuses is restricted as follows unless the non-citizen is a

qualified military non-citizen or the spouse or dependent child of a qualified military non-citizen:

- **For FIP**, an individual is disqualified for the first five years in the U.S.
- **For SDA**, an individual is disqualified.
- **For MA** an individual is limited to emergency services for the first five years in the U.S.
- Non-citizen granted conditional entry under INA section 203(a)(7).
- Lawful Permanent Resident with an I-151, Alien Registration Receipt Card. (not acceptable for MA verification)

FIP, MA and FAP

- An non-citizen who has been battered or subjected to extreme cruelty in the United States or whose child or parent has been battered or subjected to extreme cruelty in the United States. **Exception:** The eligibility of a battered alien admitted into the U.S. on or after August 22, 1996, is restricted as follows:
 - **For FIP**, clients are disqualified for the first five years in the U.S. For MA, clients are limited to emergency services for the first five years in the U.S.
 - **For FAP**, clients are disqualified unless they meet one of the applicable footnotes listed in Exhibit II-CITIZENSHIP/NON-CITIZEN STATUS TABLE at the end of this item.

A non-citizen is considered a battered alien if all of the following conditions are met:

- The USCIS or the Executive Office of Immigration Review (EOIR) has granted a petition or found that a pending petition sets forth a prima facie case that the non-citizen is eligible for legal permanent resident status (LPR) by way of being one of the following:
 - A spouse or child of a U.S. citizen or LPR.
 - The widow or widower or a U.S. citizen to whom the non-citizen had been married for at least two years before the citizen's death.
 - A battered alien, or the non-citizen parent of a battered child, or the non-citizen child of a battered parent.
- The abuse was committed by the non-citizen's spouse or parent, or by a member of the spouse or parent's family residing in the same household as the non-citizen, and the spouse or parent consented to such battery or cruelty (and if the victim was the non-citizen's child, the non-citizen did not participate in or condone the abuse).
- There is a substantial connection between the battery or extreme cruelty and the need for assistance.

- The battered alien, child or parent no longer lives in the same household as the abuser.

SDA and FAP

- Lawful Permanent Resident (regardless of class code) meeting the Social Security Credits (SSC) requirement; see SOCIAL SECURITY CREDITS in this item.

Note: A qualified military non-citizen, spouse or dependent child, regardless of date of entry or class code, need not meet the SSC requirement.

Note: For FAP, a qualified non-citizen who has been in the U.S. for five years need not meet the SSC requirement.

FAP

- A qualified non-citizen who was lawfully residing in the U.S. on August 22, 1996 and was 65 years of age or older on August 22, 1996.
- A person who is lawfully residing in the U.S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe assisted U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975, or is either:
 - The unmarried dependent child of such Hmong or Highland Laotian who is under the age of 18 or if a fulltime student under the age of 22; an unmarried child under the age of 18 or if a full-time student under the age of 22 of such a deceased Hmong or Highland Laotian provided the child was dependent upon them at the time of their death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the person prior to the child's 18th birthday.
 - The spouse, or surviving spouse of such a person who is deceased.
- A person lawfully residing in the U.S. and disabled now. Disabled means:
 - Receives SSI, RSDI, MA, or Railroad Retirement benefits based on disability or blindness.
 - Is a veteran with a disability rated or paid as total by the Veterans Administration (VA).

- Is a veteran or the surviving spouse of a veteran and considered by the VA to be in need of regular aid and attendance or permanently housebound.
- Is a surviving child of a veteran and considered by the VA to be permanently incapable of self-support.
- Is a surviving spouse or child of a veteran and considered by the VA to be entitled to compensation for a service-connected death or pension benefits for a non-service-connected death and has a permanent disability.
- Persons who have lived in the U.S. as a qualified non-citizen for at least five years since their date of entry.
Note: A non-citizen who is eligible for FAP under a status that doesn't require five years U.S. residence who later adjusts to a status that is subject to the five-year limit continues to be eligible.
- A qualified non-citizen who is under 18 years of age.

BEM 225, January 1, 2024, pp. 4-11.

LAWFULLY RESIDING IN THE U.S.

A person is (or was) lawfully residing in the U.S. if he or she meets (or met) one of the following criteria:

- Is a **qualified** non-citizen.
- Has been inspected and admitted to the U.S. and has not violated the terms of the status under which the individual was admitted or to which he or she has changed after admission.
- Has been paroled into the U.S. pursuant to Section 212(d)(5) of the INA for at least one year or was either:
 - Paroled for deferred inspection or pending exclusion proceedings under 236(a) of the INA.
 - Paroled into the U.S. for prosecution under 8 CFR 212.5(a)(3).
- Is in temporary resident status under Section 210 or 245A of the INA.
- Is under temporary protected status under Section 244A of the INA.
- Is a family unity beneficiary under Section 301 of P.L. 101-649, as amended.
- Is under deferred enforced departure pursuant to a decision made by the president of the United States.
- Is in deferred action status pursuant to service operations instructions at OI 242.1(a)(22).
- Is the spouse or child of a U.S. citizen whose visa petition has been approved and who has a pending application for adjustment of status.
- Is an applicant for asylum under Section 208(a) of the INA.
- Is an applicant for withholding of deportation under Section 243(h) of the INA who has been granted employment authorization.

- Is an applicant for asylum or withholding of deportation who is under the age of 14 and has had an application pending for at least 180 days.

BEM 225, January 1, 2024, pp. 11-12.

In this case, the Order of Release on Recognizance stated Petitioner was arrested and placed in removal proceedings but has been released on her own recognizance. (Exhibit A, p. 22). The Notice to Appear states Petitioner is an alien present in the United States who has not been admitted or paroled. (Exhibit A, p. 23). The local Department office sought a policy clarification regarding Petitioner's eligibility based on her immigration status. The refugee services unit indicated Petitioner was lawfully present in the US as she awaits her appointment for her immigration case to be heard, as indicated by the assigned alien number. Petitioner does not qualify as a refugee and would not be eligible for refugee programs. The FAP policy unit agreed with the refugee policy unit that Petitioner is here legally but is not eligible for FAP. (Exhibit A, pp. 33-35).

Petitioner confirmed that she is in the process of applying for asylum and indicated she had not received any additional documents regarding her immigration status. The process for asylum can take over five months. (Petitioner Testimony).

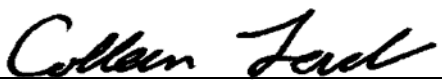
At the time of the February ■■■ 2024 FAP determination, Petitioner was not eligible for FAP based on her immigration status. As discussed, if there is a change, such as Petitioner being granted asylum, Petitioner may wish to reapply for FAP.

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 acted in accordance with Department policy when it determined Petitioner's eligibility for FAP.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.

CL/dm



Colleen Lack
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
MDHHS-Kent-
Hearings@michigan.gov

HoldenM

DensonSogbakaN

BSC3HearingDecisions

MOAHR

Via-First Class Mail :

Petitioner

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