



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
DIRECTOR

[REDACTED], MI [REDACTED]

Date Mailed: June 5, 2024
MOAHR Docket No.: 24-004725
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 May 29, 2024. As of the hearing date, Petitioner was deceased. Petitioner's mother participated as Petitioner's authorized hearing representative (AHR). The Michigan Department of Health and Human Services (MDHHS) failed to participate despite being given at least 15 minutes from the scheduled hearing time.

ISSUE

The issue is whether MDHHS properly denied Petitioner's application requesting Food Assistance Program (FAP) benefits.

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] 2024, Petitioner applied for FAP benefits.
2. On an unspecified date, during an application interview, Petitioner reported to MDHHS that she was not a United States citizen.
3. On March 14, 2024, MDHHS denied Petitioner's application due to Petitioner's status as a non-citizen and ineligible alien.

4. On April 22, 2024, Petitioner requested a hearing to dispute the denial of FAP benefits. Petitioner additionally requested a hearing to dispute cash assistance.

CONCLUSIONS OF LAW

The FIP was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. MDHHS administers the FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

FIP and SDA are MDHHS's cash assistance programs.¹ FIP and SDA policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing, in part, to dispute cash assistance. Petitioner testified she wanted a hearing for cash assistance only because she would like to receive cash assistance from MDHHS.

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) that 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 consider the recipient's choice of service.

Petitioner testimony acknowledged that she had not applied for cash assistance and that MDHHS had taken no negative actions concerning cash assistance. Thus, Petitioner failed to establish an MDHHS action allowing for an opportunity for an administrative hearing. Accordingly, Petitioner's hearing request will be dismissed concerning cash assistance.

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 policies are contained in the BAM, BEM, and RFT.

¹ MDHHS also offers a cash assistance program for refugees.

Petitioner also requested a hearing to dispute a denial of FAP benefits. Exhibit A, pp. 3-5. Petitioner applied for FAP benefits on [REDACTED] [REDACTED] 2024. A Notice of Case Action dated March 14, 2024, stated that Petitioner's application was denied due to Petitioner not being a U.S. citizen or eligible alien, and/or due to a failure to verify citizenship or alien status. Exhibit A, pp. 10-13.

For FAP benefits, a person must be a U.S. citizen or have an acceptable alien status. BEM 225 (January 2024) p. 1. Any of the following persons are considered to have an acceptable alien status:

- United States citizens (includes those born in Puerto Rico)
- born in Canada and at least 50% American Indian
- member of American Indian tribe
- qualified military alien, spouse or child of qualified military alien,
- refugee under Section 207
- asylee under Section 208
- Cuban/Haitian entrant
- Amerasian
- victim of trafficking
- permanent resident alien with class code of RE, AM, AS, SI or SQ
- permanent resident alien and has I-151
- deportation withheld (under certain conditions)
- granted conditional entry under 203(a)(7)
- paroled under 212(d)(5) for at least one year (under certain conditions)
- battered aliens, if more than five years in the United States
- permanent resident alien with a class code other than RE, AM or AS, if in the United States for longer than 5 years.² *Id.*, pp. 33-35.

Petitioner testified that she is uncertain of her citizenship because she does not possess a birth certificate. Petitioner testified that she was told by caretakers that she was born in Michigan, though she cannot prove it. Despite what she was told, Petitioner inexplicably told MDHHS that she was not a United States citizen.³

Petitioner's primary argument was that federal law prohibits MDHHS from denying benefits based on nationality. The federal cited by Petitioner specifically law states that no person shall be denied benefits under any program receiving federal assistance or be subject to discrimination because of their nationality. Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq. A benefit eligibility requirement that applicants be U.S.

² Persons with a class code other than RE, AM or AS who entered the United States after August 22, 1996, may be eligible for FAP benefits for their first five years in the United States if any of the following circumstance are applicable: U.S. entry before August 22, 1996; has 40 countable Social Security credit; age 65 or older as of August 22, 1996, and was residing in United States on August 22, 1996; Hmong or Laotian (with other requirements); currently blind or currently disabled; and/or under 18 years of age. BAM 225 (January 2024) pp. 33-35.

³ Petitioner's testimony was corroborated by MDHHS's Hearing Summary documenting that Petitioner reported not being a U.S. citizen.

citizens or qualified aliens is not deemed to run afoul of federal law. Petitioner was not denied FAP benefits because of her unknown nationality, Petitioner was denied due to failing to meet citizenship and/or resident requirements. Though MDHHS did not violate federal regulations in denying Petitioner's application, it did violate its own regulations.

A brief discussion with Petitioner during the hearing revealed she might be a United States citizen. Petitioner seemed to only inform MDHHS that she was not a U.S. citizen only because she did not possess a birth certificate or other corroborative documentation. MDHHS policy directly addresses circumstances such as Petitioner's.

A client might offer good reasons why citizenship verification cannot be obtained. BAM 225 (January 2024) p. 22. In that situation, MDHHS is to accept a U.S. citizen's signed statement under penalty of perjury that the person in question is a U.S. citizen. *Id.* Furthermore, MDHHS allows for four levels of documentary evidence which may acceptably verify citizenship and/or alien status.⁴ *Id.*, pp. 22-30.

MDHHS did not participate in the hearing to explain if it ever delved into Petitioner's circumstances to determine if Petitioner intended to report status as a non-citizen. If it had, Petitioner would have had the opportunity to submit any one of several documents allowed by MDHHS policy.

Even if MDHHS could blindly accept Petitioner's statement as fact without further consideration, Petitioner could still be eligible for FAP benefits as a qualified alien. It can be inferred from the evidence that MDHHS did not request (or properly request) information of Petitioner's possible status as a qualified alien because Petitioner's application was denied on the day after application submission. If MDHHS requested verification of acceptable alien status, MDHHS would have been required to send a Verification Checklist allowing for at least 10 days before denying Petitioner's application. BAM 130 (July 2023) p. 7.

MDHHS failed to establish it properly denied Petitioner's application for FAP benefits. As a remedy, Petitioner is entitled to a reinstatement and reprocessing of the FAP benefit application.

⁴ Petitioner contended that a letter from the U.S. Department of Homeland Security stating it had no records in response to Respondent's Freedom of Information Act (FOIA) request was acceptable verification of citizenship. Exhibit A, p. 5. Petitioner testified she used FOIA to request immigration records for herself. The letter was unpersuasive evidence because it failed to specifically state what records were requested through FOIA. Furthermore, an absence of records with Homeland Security does not acceptably verify U.S. citizenship.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's FAP eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

(1) Reinstate and reprocess Petitioner's FAP benefit application dated [REDACTED] 2024, subject to the finding that MDHHS failed to establish that it properly denied Petitioner's application; and

(2) Issue supplements and notice, if any, in accordance with policy

The actions taken by MDHHS are **REVERSED**.

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 :

DHHS

Yaita Turner
Oakland County Southfield District III
25620 W. 8 Mile Rd
Southfield, MI 48033
**MDHHS-Oakland-6303-
Hearings@michigan.gov**

Interested Parties

Oakland 3 County DHHS
BSC4
M. Holden
N. Denson-Sogbaka
B. Cabanaw
MOAHR

Via-First Class Mail :

Petitioner

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