



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: March 24, 2022  
MOAHR Docket No.: 22-000175  
Agency No.: ██████████  
Petitioner: ██████████ ██████████

**ADMINISTRATIVE LAW JUDGE: Danielle Nuccio**

### **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 March 21, 2022. The Petitioner appeared and represented himself. The Department of Health and Human Services (MDHHS) was represented by Kaylie Polk, Eligibility Specialist.

### **ISSUE**

Did MDHHS properly deny Petitioner's application to add his wife to his Food Assistance Program (FAP) group?

### **FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing recipient of FAP.
2. On ██████████, 2021, Petitioner applied to add his wife, ██████████ ██████████ (Wife), to his FAP group (Exhibit A, pp. 9-15).
3. Wife is not a United States citizen or permanent resident. Wife entered the United States on May 29, 2012. Wife is a citizen of Italy and Venezuela.
4. Wife was paroled for humanitarian medical reasons until March 24, 2015 (Exhibit A, p. 19).
5. On May 19, 2021, Wife applied for Permanent Resident status in the United States. She has not yet been granted permanent resident alien status.

6. On December 20, 2021, Petitioner submitted to MDHHS Wife's passport and Form I-797C Notice of Action for I-130 Petition for Alien Relative (Exhibit A, p. 16-19).
7. On December 27, 2021, Petitioner was advised by MDHHS that he needed to submit the current paroled status for Wife.
8. On January 5, 2022, Petitioner submitted Form I-797C ASC Appointment Notice.
9. On [REDACTED], 2022, MDHHS notified Petitioner that he has failed to provide current proof of Wife's citizenship and at this time the request to add her to his case was denied.
10. On January 7, 2022, Petitioner verbally requested a hearing regarding the denial of adding Wife to his FAP group.

### **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.

In this case, Petitioner disputes MDHHS' denial to add Wife to his FAP group. Petitioner argues that because Wife has applied for permanent resident status, or a Green Card, she should be eligible to be added to his FAP group.

A person must be a U.S. citizen or have an acceptable alien status in order to receive FAP. BEM 225 (October 2019), p. 1. Individuals who do not meet this requirement are disqualified from FAP eligibility. BEM 225, p. 1, BEM 212 (October 2020), p. 8. 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
- qualified alien who is under 18 years of age
- refugee under Section 207 of the Immigration and Nationality Act (INA), 8 USC 1101, *et seq.*

- asylee under INA 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 an I-151, Alien Registration Receipt Card
- deportation withheld (under certain conditions)
- granted conditional entry under INA § 203(a)(7)
- **paroled under INA § 212(d)(5) for at least one year**
- battered aliens, if more than five years in the United States
- a lawful permanent resident meeting the Social Security Credits requirements
- permanent resident alien with a class code other than RE, AM or AS, if in the United States for longer than 5 years
- A person lawfully residing in the U.S. and currently disabled (receives Supplemental Security Income (SSI), Retirement, Survivors and Disability Insurance (RSDI), or Medicaid, or Railroad Retirement benefits based on a disability or has certain Veteran Administration designations)
- Persons who have lived in the U.S. as a qualified non-citizen for at least five years since their date of entry (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).

BEM 225, pp. 33-35 (Emphasis added)

It is undisputed that Wife is not a U.S. citizen. Wife entered the U.S. on May 29, 2012. Wife was granted parole status on May 29, 2012, which allows her to be lawfully within the U.S. Wife's parole expired on March 24, 2015. MDHHS has not presented evidence as to why Wife does not qualify for FAP under the eligibility provision: **paroled under INA § 212(d)(5) for at least one year**. Wife clearly had parole status for well over one year and documentation of such was provided by Petitioner. Therefore, MDHHS has failed to satisfy its burden that it acted in accordance with policy in denying FAP for Wife.

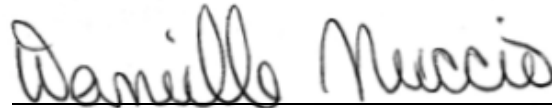
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that MDHHS failed to satisfy its burden that it acted in accordance with policy in denying FAP for Wife.

### **DECISION AND ORDER**

Accordingly, MDHHS' 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. Reprocess Petitioner's group member addition application submitted on [REDACTED], 2021;
2. If Petitioner is eligible for supplements, issue supplements to Petitioner for any FAP benefits his group was eligible to receive but did not from [REDACTED], 2021 ongoing; and
3. Notify Petitioner of its decision in writing.



**Danielle Nuccio**  
Administrative Law Judge

DN/mp

**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

**Email Recipients:**

MDHHS-Bay-Hearings  
D. Sweeney  
M. Holden  
MOAHR  
BSC2

**First-Class Mail Recipient:**

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