



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: December 22, 2022
MOAHR Docket No.: 22-005533
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Linda Jordan

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 on December 21, 2022 via teleconference. Petitioner appeared and represented himself. [REDACTED] appeared as a witness for Petitioner. Leah Yankee, Eligibility Specialist, represented the Michigan Department of Health and Human Services (MDHHS or Department).

ISSUE

Did MDHHS properly determine Petitioner's Food Assistance Program (FAP) benefit rate?

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 benefits. Petitioner's FAP benefit rate was based in part on income received by household member [REDACTED] from [REDACTED] (Employer 1). Additionally, Petitioner's daughter, [REDACTED] was excluded from the FAP group for being an ineligible student.
2. On September 19, 2022, MDHHS sent Petitioner a New Hire Client Notice for income received by [REDACTED] from [REDACTED] (Employer 2) (Exhibit A, p. 5).
3. On October 18, 2022, MDHHS redetermined Petitioner's FAP benefit rate based in part on household income from Employer 1 and Employer 2. MDHHS determined

that Petitioner's FAP group was eligible for \$[REDACTED] in FAP benefits for a household of four, effective [REDACTED] 2022 ongoing (Exhibit A, p. 12)

4. On [REDACTED], 2022, Petitioner filed a Request for Hearing disputing his FAP benefit rate and household size (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. MDHHS 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, MDHHS determined that Petitioner's household was eligible for \$[REDACTED] per month in FAP benefits for a household of four. Petitioner disputed the FAP benefit rate, alleging that MDHHS improperly calculated the household income and wrongfully excluded his daughter, [REDACTED], from the group.

MDHHS is required to determine who is included in the FAP group prior to evaluating financial and non-financial eligibility for everyone in the group. BEM 212 (January 2022), p. 1. FAP group composition is established by (i) who lives together; (ii) the relationship(s) of the people who live together; (iii) whether the people who live together purchase and prepare food together; and (vi) whether the people residing together live in an eligible living situation. *Id.* Spouses who are legally married and live together must be in the same FAP group. *Id.* Parents and their children under age 22 who live together must be in the same FAP group. *Id.*

MDHHS must also determine if there are disqualified members of the group. *Id.*, p. 8. A person may be disqualified for several reasons. Relevant to this case, individuals are disqualified for failing to meet citizenship/non-citizenship status. Here, MDHHS determined that Petitioner and his spouse were disqualified due to citizenship status. Petitioner did not dispute this determination in his Request for Hearing or at the hearing.

Additionally, MDHHS must determine whether there are non-group members in the household. BEM 212, pp. 9-10. These are persons who live with the FAP group but are not considered members of the FAP group. MDHHS does not consider their income and assets when determining group eligibility. *Id.* Relevant to this case, this includes ineligible students, or persons in student status who do not meet the criteria listed in

BEM 245. For the purposes of FAP, beneficiaries are in student status if they are age 18 through 49 and enrolled half-time or more in a regular curriculum at a college or university that offers degree programs. BEM 245 (April 2021), pp. 3-4. In order for beneficiaries in student status to be eligible for FAP, they must meet additional requirements described in BEM 245, pp. 4-5. The Consolidated Appropriations Act (CAA) of 2021, temporarily expands student eligibility for students who have an Expected Family Contribution of \$0 in the current academic year based on the student's Free Application for Federal Student Aid (FAFSA). *Id.*, p. 5. This exemption will remain effective until 30 days after the COVID-19 public health emergency is lifted. *Id.*

Here, MDHHS properly determined that [REDACTED] was in student status because she was within the student status age range (18 through 49 years old) and was attending college full time. It is unclear from the record whether [REDACTED] met the eligibility criteria established by the CAA or any of the other criteria listed in BEM 245. MDHHS testified that it received some financial aid documents from Petitioner but it was unclear whether the documents pertained to [REDACTED]'s situation.

MDHHS is required to request information from clients when required by policy or when an eligibility factor is unclear, inconsistent, incomplete or contradictory. BAM 130 (January 2022), p. 1. Given the uncertainty regarding whether [REDACTED] is an eligible student, MDHHS should have requested additional information from Petitioner. No evidence was presented that MDHHS requested this information. Therefore, MDHHS failed to satisfy its burden of showing that it acted in accordance with Department policy when it excluded [REDACTED] from the FAP group.

Additionally, Petitioner disputed the calculation of his FAP group's earned income. At the hearing, MDHHS testified that the household income included [REDACTED]'s income from Employer 1 and Employer 2. [REDACTED] testified that she no longer worked at Employer 1 and that she stopped receiving income from Employer 1 in [REDACTED] 2022. Thus, the income from Employer 1 should have been excluded from the household income. Petitioner testified that he informed MDHHS that the income from Employer 1 had stopped. MDHHS denied receiving this information. Given that the income calculation is in dispute, MDHHS should have requested verification of the household income from Petitioner, pursuant to BAM 130.

Accordingly, 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 of showing that it acted in accordance with Department policy when it determined Petitioner's FAP benefit rate.

DECISION AND ORDER

Accordingly, MDHHS' decision is **REVERSED**.

MDHHS 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 FAP benefit rate from [REDACTED] 2022 ongoing, requesting additional information, if necessary, to determine whether [REDACTED] is an eligible group member and to verify household income;
2. Issue supplements to Petitioner for any FAP benefits that the household was eligible to receive, but did not, from [REDACTED] 2022 ongoing; and
3. Notify Petitioner of its decision in writing.



LJ/tm

Linda Jordan
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

Richard Latimore
Wayne-Conner-DHHS
4733 Conner
Detroit, MI 48215
**MDHHS-Wayne-57-
Hearings@michigan.gov**

Interested Parties

M. Holden
D. Sweeney
BSC4

Via-First Class Mail :

Petitioner

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