



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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Date Mailed: March 13, 2023
MOAHR Docket No.: 23-000648
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 9, 2023. The Petitioner appeared and represented herself. The Department of Health and Human Services (MDHHS) was represented by Christopher Doerr, Eligibility Specialist.

ISSUE

Did MDHHS properly deny Petitioner's ██████████ 2023 Food Assistance Program (FAP) application?

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 ██████████ 2023, Petitioner submitted an application for FAP benefits, reporting that:
 - a. She is a group size of one.
 - b. She is a college student.
 - c. She is employed at ██████████ (Employer) working an average of 15 hours per week.

(Exhibit A, pp. 6-12).

2. On January 27, 2023, an interview was conducted between MDHHS and Petitioner as part of the FAP application process. Petitioner reported that:

- a. She is enrolled full-time at Oakland Community College.
- b. She is not enrolled in the Perkins program.
- c. She works an average of 15 hours per week at Employer.

(Exhibit A, pp. 13-19).

3. On January 27, 2023, MDHHS issued a Notice of Case Action informing Petitioner that her FAP application was denied because she was not an eligible student to receive benefits pursuant to policy (Exhibit A, p. 27-30).
4. On February 7, 2023, MDHHS received Petitioner's timely submitted hearing request, disputing the denial of her FAP 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. MDHHS (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's FAP application was denied because MDHHS concluded that she is not an eligible student.

A person enrolled in a post-secondary education program may be in student status and must meet certain criteria in order to be eligible to receive FAP benefits. BEM 230B (January 2018), p. 5; BEM 245 (April 2021), p. 2. A person is in student status if she is:

- Age 18 through 49 and
- Enrolled half-time or more in a: regular curriculum at a college or university that offers degree programs, regardless of whether a diploma is required.

(BEM 245, p. 3-4).

Here, Petitioner was 19 years old at the time of her application. Petitioner was enrolled full-time at Oakland Community College at the time of her application. Therefore, Petitioner would be considered in student status.

In order for a person in student status to be eligible to receive FAP benefits, they must meet one of the following criteria:

- Receiving Family Independence Program (FIP).
- Enrolled in an institution of higher education as a result of participation in certain qualified programs as outlined below:
 - A Job Training Partnership Act (JTPA) program.
 - A program under section 236 of the Trade Readjustment Act of 1974 us 19 USC 2341, et. seq.
 - Enrolled in a FAE&T or FAE&T plus, in a component or components that are either:
 - Part of a program of career and technical education as defined under the Perkins Strengthening Career and Technical Education Act (Perkins V) and a course of study that will lead to employment.
 - Are limited to remedial courses, basic adult education, literacy, or English as a second language.
- In an employment and training program for low-income households operated by state and local government where one or more of the components of such program is at least equivalent to an acceptable FAP employment and training program component under the Carl D Perkins Career and Technical Education Improvement Act of 2006 (leading to employment in fields such as data entry occupations, medical and health care careers, HVAC and refrigeration, hospitality, and tourism management).
- Participating in another state or local government employment and training program.
- Employed for at least an average of 20 hours per week and paid for such employment.
- Self-employed for at least an average of 20 hours per week and earning an average weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.
- Participating in a state or federally-funded work study program during the regular school year.

It should be noted that effective April 1, 2021, two new exceptions to the student status policy will be effective until 30 days after the COVID-19 public emergency is lifted. BPB 2021-012 (April 2021), p. 1. Those exceptions include 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) and students eligible under state or federally funded work study programs for individuals who are deemed as eligible to participate in work study but may not be actively participating in work study hours. BPB 2021-012, p. 1. BEM 245, p. 5.

Here, MDHHS testified that Petitioner did not meet any of the criteria to be eligible to receive FAP while in student status. Petitioner testified that she works between 15-20 hours per week at Employer. Since this is less than required by policy, which requires an average of *at least* 20 hours worked per week, MDHHS properly concluded that Petitioner was not an eligible student based upon her employment. Petitioner confirmed that she does not meet any of the other possible criteria to receive FAP while a student. However, Petitioner indicated that she did file a FAFSA. Since the COVID-19 public health emergency is still ongoing, Petitioner may be eligible for FAP benefits. Therefore, MDHHS did not act in accordance with policy when concluding that Petitioner was not an eligible student.

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 did not act in accordance with Department policy when it denied Petitioner's FAP application for being an ineligible student.

DECISION AND ORDER

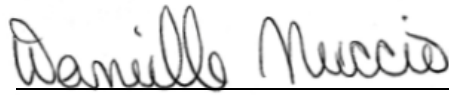
Accordingly, MDHHS' decision is **REVERSED**.

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 [REDACTED] 2023 FAP application;
2. If Petitioner is eligible for FAP benefits, issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not;

3. Notify Petitioner of its decision in writing.

DN/mp



Danielle Nuccio
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
MDHHS-Wayne-15-Greydale-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

Via-First Class Mail :

Petitioner

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