



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

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Date Mailed: June 20, 2024
MOAHR Docket No.: 24-005414
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Julia Norton

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 June 13, 2024. Petitioner was present and self-represented. Because of issues with poor connections, four individuals served as interpreters for Petitioner during the course of the hearing, in the following order: Brenda, interpreter number 4386; Mohammad interpreter number 2808; Esraa interpreter number 7641, and Randa interpreter number 4386. The Department of Health and Human Services (Department) was represented by Ryan Clemons, Family Independence Manager and Taylor Alexander, Assistance Payment Worker.

ISSUE

Did the Department properly deny Petitioner’s 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. Petitioner is █████ years old, and his household includes himself, his █████-year-old spouse (Spouse), and three children (████████, and █████).
2. █████ is █████ years old, enrolled full-time in college and not working.
3. █████ is █████ years old, enrolled part-time in college and not working.
4. On █████ 2024, Petitioner applied for FAP benefits.

5. The Department issued a Verification Checklist (VCL) with a due date of April 18, 2024. The VCL requested proof of self-employment income and expenses.
6. On April 15, 2024, the Department sent Petitioner Self-Employment Income and Expense Statement DHS-431 forms for the months of January, February, and March 2024. Exhibit A, pp. 8,12,16.
7. On April 17 and 19, 2024, Petitioner returned the DHS-431 forms and provided “profit and loss” statements for his business, [REDACTED] (Business) to the Department. Exhibit A, pp. 10-11, 14-15, 18-19.
8. Petitioner provided a paycheck dated April 1, 2024, reflecting gross earned income of \$ [REDACTED] for the period of March 15 to March 31, 2024. The paycheck was payable to Petitioner from [REDACTED]. Exhibit A, p. 21.
9. On May 2, 2024, the Department sent Petitioner a Notice of Case Action (NOCA) denying Petitioner’s FAP application for April 4, 2024 ongoing due to gross income exceeding the program limit and indicating that [REDACTED] and [REDACTED] were not eligible students. Exhibit A, pp. 26-29.
10. On May 8, 2024, the Department received Petitioner’s request for hearing disputing the Department’s calculation of Petitioner’s income. Exhibit A, pp. 3-6.

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 the Department’s calculation of self-employment income and expenses used to determine his FAP eligibility and the determination that [REDACTED] and [REDACTED] were ineligible students.

Individuals who run their own businesses are self-employed. This includes but is not limited to selling goods, farming, providing direct services, and operating a facility that provides services such as adult foster care home or room and board. For FAP benefits, the primary verification source for self-employment income is an income tax return, if that

return is representative of future income. BEM 502 (June 2024), p. 7. Secondary verification is the DHS-431 with receipts, followed by the DHS-431 without receipts.

Here, the Department concluded that Petitioner was self-employed and requested verification of self-employment income using the DHS-431. After calculating total proceeds from self-employment, the Department determined that Petitioner had gross income exceeding program limits.

However, Petitioner also submitted a paycheck payable to him from Business. The paycheck indicates that Business was an LLC. LLCs are not considered self-employment. BEM 502 (June 2024) p. 1. Instead, a wage received from an LLC is income from employment, even if the client is the owner. BEM 501, p. 5. Wages include salaries, tips, commissions, bonuses, severance pay, and flexible benefit funds not used to purchase insurance paid to an employee from an LLC. BEM 501 (January 2024), p. 6. LLCs are registered with the State of Michigan and the Department of Licensing and Regulatory Affairs Corporations Online Filing System provides access to business entity information. Petitioner's Business is registered as an LLC. Because Business is an LLC and LLCs are not considered self-employment, the Department did not act in accordance with Department policy when it treated Petitioner's income as self-employment income.

Petitioner also disputed that ■■■ and ■■■ were excluded from Petitioner's group size because they were considered ineligible students. For a student to be considered in student status, she must be between the ages of 18-49 and enrolled at least half-time in a vocational, trade, business, or technical school or in a college or university. BEM 245 (July 2023) p. 3. For a person in student status to be an eligible FAP group member, she must meet one of the following criteria:

- Receiving Family Independence Program benefits.
- Enrolled in an institution of higher education as a result of participation in certain job training programs.
- Physically or mentally unfit for employment.
- 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.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year.
- Providing more than half of the physical care of a group member under the age of six.
- Providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate child care is not available

- A single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12.
BEM 245 (July 2023), pp. 5-6.

Petitioner testified that ■■■ was ■■■ years old, and ■■■ was ■■■ years old, both were enrolled in college at least half time and neither were working. The Department testified that the children were in student status. The Department explained that because the children were not working 20 or more hours per week, they were ineligible students. However, there are other criteria besides working at least an average of 20 hours a week that a person in student status may satisfy to be eligible. No evidence was presented that information regarding whether ■■■ or ■■■ met any other eligible criteria was requested of Petitioner. The Department is required to obtain verification when information regarding an eligibility factor is unclear, inconsistent, incomplete, or contradictory. BAM 130, p. 1. The Department should have requested further information about ■■■ and ■■■ to determine if either qualified as an eligible student under any other criteria. Since the Department failed to show that it considered ■■■ or ■■■ student eligibility under any other criteria, and did not request verification of eligibility, the Department did not act in accordance with Department policy when it concluded that both ■■■ and ■■■ were not eligible students.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it denied Petitioner's FAP application.

DECISION AND ORDER

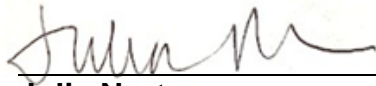
Accordingly, the Department's decision is **REVERSED**.

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. Reregister and reprocess Petitioner's ■■■■■ 2024 FAP application, requesting verifications if necessary;
2. If Petitioner is eligible for FAP benefits, supplement Petitioner for FAP benefits he was eligible to receive from April 4, 2024 ongoing; and

3. Notify Petitioner of its decision in writing.

JN/cc

A handwritten signature in black ink, appearing to read "Julia Norton", written over a horizontal line.

Julia Norton
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 :

Interested Parties

MDHHS-Washtenaw-Hearings
BSC4-HearingDecisions
N. Denson-Sogbaka
B. Cabanaw
M. Holden
MOAHR

Via-First Class Mail :

Petitioner

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