



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

[REDACTED] MI [REDACTED]

Date Mailed: September 3, 2024
MOAHR Docket No.: 24-007725
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 August 28, 2024. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Danai Ajami, Eligibility Specialist. Interpretation services were provided by Rafat Arman.

ISSUE

Did the Department properly determine Petitioner’s Food Assistance Program (FAP) eligibility?

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 January 22, 2024, the Department received Petitioner’s completed Semi-Annual Contact Report showing herself, and her youngest son in the household, and also that her income had not changed by more than \$125.00 per month from the previously budgeted \$ [REDACTED] per month.
2. Effective February 2024, Petitioner was placed in noncompliance with child support requirements.
3. Petitioner also submitted wage verifications which showed the following:

February 2, 2024	\$ [REDACTED]	
February 9, 2024	\$ [REDACTED]	
February 16, 2024	\$ [REDACTED]	(which included \$ [REDACTED] of overtime pay)

February 23, 2024

\$ [REDACTED]

4. On May 23, 2024, the Department issued a Notice of Case Action to Petitioner advising her that she was ineligible for benefits because of her alien status. The Notice of Case Action was not offered or admitted as an exhibit.
5. On June 25, 2024, Petitioner's alien status was updated but no Notice of Case Action was issued.
6. On June 26, 2024, the Department received Petitioner's request for hearing disputing the determination of her FAP eligibility.
7. On July 10, 2024, a new Notice of Case Action was issued advising Petitioner that her group was eligible for \$25.00 per month in FAP benefits, but that the group only included her son. The Department failed to provide the second page of the Notice of Case Action which identified the reasons for Petitioner's exclusion from the group; however, a Bridges screen shot shows that Petitioner is still listed as failing the alien status requirement and as having a sanction for non-cooperation with child support requirements.

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, the Department held Petitioner ineligible for FAP benefits based on her residency status and disqualified her from FAP benefits based upon non-cooperation with child support requirements.

Policy provides that to be eligible for FAP benefits, a person must be a United States citizen or have an acceptable non-citizen status. BEM 225 (January 2024), p. 1. Acceptable non-citizen statuses include

- children of United States citizens born abroad who meet certain criteria,
- a person born in Canada who is at least 50% American Indian,
- a member of a federally recognized American Indian tribe,

- a qualified military non-citizen,
- a qualified non-citizen spouse and unmarried qualified non-citizen dependent child of a qualified military non-citizen,
- a lawful permanent resident with a class code of RE, AS, SI, or SQ on the I-551,
- a refugee admitted under INA Section 207,
- granted asylum under INCA Section 208,
- Cuban/Haitian entrant,
- Amerasian under P.L. 100-202,
- Victim of trafficking under P.L. 106-386 of 2000,
- Non-citizen whose deportation is being withheld under INA Sections 241(b)(3) or 243(h),
- A non-citizen who has been battered or subject to extreme cruelty in the United States or whose child or parent has experienced these items,
- Lawful permanent resident meeting the social security credits requirement,
- A qualified non-citizen who was lawfully residing in the United States on August 22, 1996 and was 65 years of age or older on August 22, 1996,
- A person lawfully residing in the United States and was a member of the Hmong or Highland Laotian tribe that assisted during the Vietnam era beginning August 5, 1964 and ending May 7, 1975 that meets additional requirements,
- A person lawfully residing in the United States and is disabled,
- A person who is lived in the United States as a qualified non-citizen for at least five years since their date of entry, and
- A qualified non-citizen who is under 18 years of age

The Department failed to provide any documentation upon which it relied in support of its decision that Petitioner did not meet one of the above criteria to be qualified for FAP. The Department only testified that Petitioner had been present in the United States for five years as of some unidentified date in the summer of 2024. Therefore, the Department has not met its burden of proof that it acted in accordance with policy in disqualifying Petitioner from receipt of FAP benefits based upon her citizen/non-citizen status.

The Department also disqualified Petitioner from receipt of FAP benefits due to noncooperation with child support requirements. In FAP cases, the custodial parent or alternative caretaker of a child must comply with all requests for action or information needed to establish paternity and/or obtain child support on behalf of children for whom they receive assistance, unless a claim of good cause for not cooperating has been granted or is pending. BEM 255 (February 2024), p. 1. Cooperation includes contacting the support specialist when requested; providing all known information about the absent parent; appearing at the office of the prosecuting attorney when requested; and taking any actions needed to establish paternity and obtain child support. BEM 255, p. 9. In FAP cases, failure to cooperate without good cause results in disqualification of the individual who failed to cooperate from the FAP group. BEM 255, p. 14. The individual and their needs are removed from the FAP group for a minimum of one month; the remaining eligible group members would continue to receive FAP benefits. *Id.*

Petitioner admits that she has not contacted anyone or provided any information about her child's father but noted in the hearing that she did not have any information about him. However, in her hearing request, she noted that the father lives in [REDACTED]. Petitioner must contact the Office of Child Support and provide all known information about the location and identity of her child's father to be placed in cooperation status and have the disqualification removed. The Department properly disqualified Petitioner from receipt of FAP benefits for failure to cooperate with child support requirements.

Because Petitioner was properly disqualified from FAP based on noncooperation with child support requirements, an evaluation of the calculated FAP rate follows below assuming a group size of one for just Petitioner's son.

To determine whether the Department properly calculated Petitioner's FAP benefit rate, the evaluation first starts with consideration of all countable earned and unearned income available to the group. BEM 500 (April 2022), pp. 1-5. The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Prospective income is income not yet received but expected. BEM 505 (October 2023), p. 1. In prospecting income, the Department is required to use income from the past 30 days if it appears to accurately reflect what is expected to be received in the benefit month, discarding any pay if it is unusual and does not reflect the normal, expected pay amounts. BEM 505, pp. 4-9. A standard monthly amount must be determined for each income source used in the budget. BEM 505, pp. 8-9. Petitioner had verified gross income of \$ [REDACTED], \$ [REDACTED], \$ [REDACTED], and \$ [REDACTED] respectively. Petitioner noted on her Semi-Annual Contact Report that her income had not changed by more than \$125.00 per month from the previously budgeted \$ [REDACTED], therefore, the Department excluded the highest and lowest paychecks from consideration. When Petitioner's income is averaged and multiplied by 4.3 to achieve her standardized income is \$ [REDACTED]. The Department improperly budgeted \$1,354.00. Petitioner's group's gross income exceeds the gross income limit of \$1,580 for a group size of one. RFT 250 (October 2023), p. 1. Because Petitioner's group exceeds the gross income limit for a group size of one, they are ineligible for FAP benefits.

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 disqualified Petitioner from receipt of FAP benefits based upon her citizen/non-citizen status and in determining Petitioner's group's FAP benefit rate.

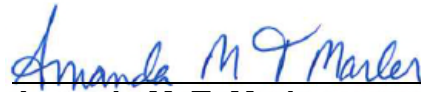
DECISION AND ORDER

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. Redetermine Petitioner's and her group's FAP eligibility based on the effectiveness date listed in the May 23, 2024 Notice of Case Action;
2. If otherwise eligible, issue supplements to Petitioner for benefits not previously received; and,
3. Notify Petitioner in writing of its decision.

AM/cc



Amanda M. T. Marler
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-Wayne-55-Hearings
BSC4-HearingDecisions
N. Denson-Sogbaka
B. Cabanaw
M. Holden
MOAHR

Via-First Class Mail :

Petitioner

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