



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

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

Date Mailed: January 10, 2019
MAHS Docket No.: 18-012162
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 January 2, 2019, from Detroit, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Temissia Hutchins, Hearing Coordinator and Maisha Saffore, Assistance Payments Worker.

ISSUE

Did the Department properly close the Petitioner's Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. The Petitioner and her FAP group were ongoing recipients of FAP benefits.
2. On November 7, 2018 the Department issued a Notice of Case Action closing the Petitioner's FAP case effective December 1, 2018, due to [REDACTED] Petitioner's daughter, (age [REDACTED] failure to participate in employment due to quitting her job without good cause. Exhibit 1.
3. At the time of the Notice, the Petitioner and her daughter were living together; and the daughter was a mandatory FAP group member.

4. The pregnancy was reported on October 9, 2018, and also reported that Petitioner's daughter [REDACTED] job ended on September 28, 2018, and her statement that morning sickness was really bad due to pregnancy. (Exhibit 3.)
5. [REDACTED] also provided a doctor's statement dated September 14, 2018, that stated she was under her doctor's professional care and advised of the estimated due date. (Exhibit 2.)
6. The Department sent a Verification Checklist (VCL) on October 18, 2018, requesting that Petitioner provide the last 30 days of paystubs, or verification of employment as well as loss of employment for [REDACTED]. The verifications were due October 29, 2018. (Exhibit 4.)
7. On September 25, 2018, [REDACTED], the employer, sent a letter advising that as of September 25, 2018, [REDACTED] has been given her paycheck for the week of September 17, 2018, through September 20, 2018, and the following week for a total pay of \$[REDACTED] (Exhibit 5.) The employer's note indicates that [REDACTED] resigned as an employee from [REDACTED] and resigned voluntarily via text message. (Exhibit 5.)
8. The Petitioner requested a timely hearing on November 14, 2018, protesting the Department's actions.

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, at the time of Petitioner's daughter, [REDACTED] resignation from her employment, there was no evidence that she was receiving Family Independence Program (FIP) cash assistance benefits. In addition, [REDACTED] was [REDACTED] years of age and was a mandatory FAP group member. BEM 212(January 2017), p. 1. Department policy found in BEM 233B provides that a non-deferred adult member of a FAP household must follow certain work-related requirements in order to receive food assistance, or the household may be disqualified under certain conditions as follows:

Disqualify non-deferred adults who were working when the person:

- Voluntarily quits a job of 30 hours or more per week without good cause, or
- Voluntarily reduces hours of employment below 30 hours per week without good cause, or

Note: If the job quit or reduction in hours occurred more than 30 days prior to the application date, no penalty applies.

For FAP only noncompliance, the Department may disqualify non-deferred adults who were working 30 hours or more per week without good cause. BEM 233B (January 2018), p. 4 emphasis supplied.

Disqualifications for failure to comply without good cause are the same for FAP applicants, recipients and member adds. Evaluate each client's work requirement before imposing a disqualification; see BEM 230B DEFERRALS.

- For the first occurrence, disqualify the person for one month or until compliance, whichever is longer. BEM 233B, p. 6.

For recipients, begin the disqualification the first month possible after determination or notification of the failure to comply. Provide the group timely notice. **BEM 233B, p. 7.** In addition, the Department is required to continue to include the disqualified member income and expenses as they count toward the remaining eligible group members. BEM 233B, p. 7.

In this case, the first factual issue is whether the Petitioner's daughter was working 30 hours or more per week. Based upon the letter from her then-employer, it cannot be determined how many hours [REDACTED] was working. If less than 30 hours, the disqualification under BEM 230B cannot be upheld. Thus, in this instance, the Department is required to determine initially whether [REDACTED] was working 30 hours before any disqualification; and the Department must also determine good cause before implementing disqualification. BEM 233B, p. 5.

As a result of the Petitioner's daughter resigning her job voluntarily, the Department found noncompliance without good cause because although the Petitioner's daughter was pregnant and claimed really bad morning sickness, her doctor's note did not confirm that she was unable to work due to morning sickness but only stated that she was pregnant and under his care. In this case the Department determined that good cause was not demonstrated based upon information provided by [REDACTED].

A pregnant individual may be deferred and avoid disqualification. Deferral for FAP clients is defined in BEM 230B under the following circumstances provided the necessary proofs are provided. The FAP client must be either deferred or in

compliance. Clients meeting one of the criteria below are temporarily deferred from employment-related activities and work registration.

Disability

Defer persons incapacitated due to injury, pregnancy complication, physical illness or mental illness.

Verify a reason for deferral only if it is not obvious and the information provided is questionable (unclear, inconsistent or incomplete).

Sources that may be used to verify questionable information are:

- SSI/RSDI/MA approval or receipt based on disability or blindness. For SSI and RSDI, use one of the sources referenced in FIP policy, Care of Disabled Spouse or Disabled Child, in BEM 230A.
- Statement from an M.D./D.O./ P.A that the person is unable to work.
- The DHS-54A, Medical Needs; DHS-49, Medical Examination Report; DHS-49-D, Psychiatric/Psychological Examination Report; or another written statement is acceptable.
- A medically documented pregnancy complication confirmation by an M.D./D.O./P.A., certified nurse-midwife, ob-gyn nurse practitioner or ob-gyn clinical nurse specialist, which must include an expected date of delivery. BEM 230B (January 2018), pp. 4-5.

Thus, as can be seen, a deferral due to pregnancy complication is available but requires **a statement from an M.D./D.O./P.A. that the person is unable to work due to pregnancy complication.** The statement provided by [REDACTED] did not indicate a pregnancy complication or that she was unable to work. Thus, the Department could not, based upon [REDACTED] statement alone defer her.

In this case good cause was not demonstrated by Petitioner's daughter. [REDACTED] provided her own statement regarding her pregnancy and that she was having really bad morning sickness due to pregnancy. Her doctor noted did not indicate a reason for any deferral but merely stated that [REDACTED] was pregnant and under his care and the due date. (Exhibit 2.)

In addition to a deferral a person may avoid disqualification for resigning a job but the individual must demonstrate good cause which is defined as:

Good cause is a valid reason for failing to participate in employment and/or self-sufficiency-related activities or refusing suitable employment. Investigate and determine good cause before deciding whether to imposing a disqualification. Good cause includes the following:

Deferred

- The person meets one of the deferral criteria; see DEFERRALS in BEM 230B.

Meets Participation Requirements

- The person meets participation requirements; see DEFERRALS in BEM 230B.

Wage Under Minimum

- Except for sheltered workshops, the wage offered, including tips, is less than the applicable state minimum wage.

Client Unfit

- The client is physically or mentally unfit for the job, as shown by medical evidence or other reliable information.

Health or Safety Risk

- The degree of risk to health or safety is unreasonable.

Illness or Injury

- The client has a debilitating illness or injury, or an immediate family member's illness or injury requires in-home care by the client.

Religion

- The working hours or nature of the employment interferes with the client's religious observances, convictions or beliefs.

Net Income Loss

- The employment causes the family a net loss of cash income.

No Child Care

- Child Development and Care (CDC) is needed for a CDC-eligible child, but none is adequate, suitable, affordable and within reasonable distance of the client's home or work site; see BEM 703.

No Transportation

- Reasonably priced transportation is not available to the client.

Illegal Activities

- The employment involves illegal activities.

Discrimination

- The client experiences discrimination on the basis of age, race, disability, gender, color, national origin or religious beliefs.

Unplanned Event or Factor

- Credible information indicates an unplanned event or factor which likely prevents or significantly interferes with employment and/or self-sufficiency-related activities. BEM 230B, pp 3-6.

As previously indicated, [REDACTED] own statement is not sufficient without a doctor's statement indicating that she is ill or unable to work due to pregnancy complication. It is unclear whether the Department requested deferral information or advised [REDACTED] that a deferral could only be based on pregnancy complications and must be established by a doctor/D.O. or P.A. The letter from her doctor predates her resigning her job.

Based upon the fact that it cannot be determined whether the Department properly determined initially whether [REDACTED] was working 30 hours or more, and it cannot be determined on the basis of the Employer letter the number of hours [REDACTED] was working, the Department has not met its burden to establish that the one-month disqualification was in accordance with Department policy. Clearly the Department did establish that [REDACTED] resigned her employment; however, it cannot be determined that she was working 30 hours weekly when she resigned in order to establish noncompliance without good cause. See BEM 233B., p. 4, for FAP only noncompliance for a non-deferred adult. The Department must also determine good cause before implementing a disqualification. BEM 233 B, p. 5.

Additionally, the Department policy requires that while an in-person meeting is not required for FAP only noncompliance, the Department must have a phone conference with the non-deferred adult to determine if good cause is acceptable. BEM 233B, p. 6. There was no evidence that such a phone conversation occurred between the Department and [REDACTED], the person who was alleged to be noncompliant. The Doctor's note pre-dated [REDACTED] resigning her employment, and there was no evidence that she was offered an opportunity to update the letter to determine either a deferral due pregnancy complication causing her inability to work or good cause.

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 found [REDACTED] in noncompliance and imposed a disqualification.

DECISION AND ORDER

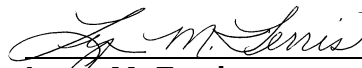
Accordingly, the Department's decision is **REVERSED**.

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. The Department shall remove the disqualification for [REDACTED] and reinstate her to the FAP group effective December 1, 2018.
2. The Department shall issue a FAP supplement to Petitioner for FAP benefits the Petitioner was otherwise entitled to receive, if any, in accordance with Department policy.

LMF/jaf



Lynn M. Ferris

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Demitra Owens
MDHHS-Wayne-55-Hearings

Petitioner

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