



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]

Date Mailed: May 21, 2019
MOAHR Docket No.: 19-003132
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 May 20, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearings Facilitator. During the hearing, a 48-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-48.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits case, effective April 1, 2019?

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 from the Department. Petitioner's benefit period was certified through the end of November 2018. Thus, to receive continued benefits, Petitioner's case needed to be redetermined for December 2018, ongoing.
2. Petitioner is an able-bodied adult born [REDACTED], 1978. During the relevant time period, Petitioner claimed to be self-employed as an attorney and legal commentator working a substantial number of hours every week writing a legal newsletter for which she did not get paid. Further, Petitioner claimed to be self-employed in the real estate business on a commission basis and that she worked

substantial hours every month on that business despite not getting any income from her alleged real estate self-employment since 2015.

3. On November 2, 2018, the Department issued to Petitioner a Time Limited Food Assistance Notice informing Petitioner that effective December 1, 2018, Petitioner was subject to Time Limited Food Assistance (TLFA) work requirements. The notice described the requirements. It further informed Petitioner that during any 36 month period, Petitioner could fail to meet the requirements and still get FAP benefits for only three months. After those three months were used up, Petitioner was ineligible unless she met the requirements. Exhibit A, pp. 10-11.
4. On November 2, 2018, the Department issued to Petitioner a FAP Employment and Training Appointment Notice. The notice, in relevant part, informed Petitioner that she was subject to the TLFA work requirements and explained how to meet them. Further, Petitioner was provided with notice of a December 3, 2018 appointment at the Michigan Works! Agency (MWA) as an option for Petitioner to meet her work requirement. In bold, the notice stated **“This referral to the MWA is not a mandatory appointment. If you choose to participate in Self-Initiated Community Service or Employment (including self-employment or in-kind employment) instead of participating at the MWA, you must inform your specialist of this choice.”** The notice also directed Petitioner to contact the Department if she had any issues with transportation and notified her that the Department could help. Exhibit A, pp. 12-13.
5. On December 28, 2018, the Department issued to Petitioner a Notice of Time Limited Food Assistance Countable Month/Out of State Countable Month informing Petitioner that she was considered to have failed to meet the TLFA work requirement for the month of December 2018. This was the first month that she was found to have failed to meet the requirement. Exhibit A, pp. 14-15.
6. On or about January 29, 2019, Petitioner sent to the Department a letter indicating that she believed she was deferred from TLFA work requirements due to working at least 30 hours per week and that even if she was not deferred, she had good cause for noncompliance with the work requirements due to sex discrimination and a lack of transportation.
7. On January 30, 2019, the Department issued to Petitioner a Notice of Time Limited Food Assistance Countable Month/Out of State Countable Month informing Petitioner that she was considered to have failed to meet the TLFA work requirement for the month of January 2019. This was the second month that she was found to have failed to meet the requirement. Exhibit A, pp. 20-21.
8. On February 13, 2019, the Department issued to Petitioner a Quick Note document telling Petitioner to send in tax return documentation so the Department could assess whether Petitioner’s self-employment would meet the TLFA work requirements. Exhibit A, p. 30.

9. On February 27, 2019, the Department issued to Petitioner a Notice of Time Limited Food Assistance Countable Month/Out of State Countable Month informing Petitioner that she was considered to have failed to meet the TLFA work requirement for the month of February 2019. This was the third month that she was found to have failed to meet the requirement. Exhibit A, pp. 24-25.
10. On March 1, 2019, Petitioner submitted to the Department tax return documentation. Exhibit A, pp. 42-48.
11. On March 11, 2019, the Department issued to Petitioner three Self-Employment Income and Expense Statement documents, one for each month from January 2019 through March 2019. Petitioner returned the completed documents on March 18, 2019. For January 2019, Petitioner represented that she worked 20 hours in the month. For February 2019, Petitioner represented that she worked 20 hours in the month. For March 2019, Petitioner represented that she was on track to work 120 hours in the month. For each month, Petitioner indicated that she had no income from any of her self-employment activities. Exhibit A, pp. 31-36.
12. On March 19, 2019, the Department issued to Petitioner a Notice of Case Action informing Petitioner that her FAP benefits case was closing, effective April 1, 2019, as a result of Petitioner's failure to participate in TLFA work requirements for three months. Exhibit A, pp. 26-29.
13. On [REDACTED], 2019, Petitioner submitted a request for hearing objecting to the Department's action. Petitioner's position, as stated in the hearing request and at the hearing, was that she qualified for a TLFA deferral since she allegedly works an average of 30 hours or more per week over the benefit period. In addition, Petitioner asserted that even if she was not deferred, she had good cause for noncompliance with the work requirements because of discrimination, unreasonable work conditions, and a lack of reasonably priced transportation. Exhibit A, pp. 3-5.

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 closed Petitioner's FAP benefits case, effective April 1, 2019, after determining that Petitioner did not meet the TLFA work requirements for the months of December 2018, January 2019, and February 2019. Petitioner objected and requested a hearing, arguing that she should have been deferred from the work requirements due to her alleged self-employment. She further argued that even if she was not deferred, she presented good cause reasons for noncompliance that should have excused her alleged failure to meet the requirements.

All FAP individuals age 18 through 49 are TLFA unless deferred. BEM 320 (January 2019), p. 2. A TLFA individual must meet specific work requirements to receive benefits. BEM 620, p. 1. Failure to do so limits the individual's FAP benefits eligibility to three months within a 36-month period. BEM 620, p. 1. TLFA individuals who meet all other FAP eligibility criteria are eligible for three countable months of FAP benefits during a 36-month period; eligible individuals can receive three countable months of benefits within each 36-month period. BEM 620, p. 1. For a FAP benefit month not to be countable, a TLFA individual must work at least 80 hours or participate 80 hours in an employment and training program administered by the local MWA in the county. BEM 620, p. 4. Work includes work in exchange for money, including self-employment, and work in exchange for goods or services (in-kind). BEM 620, p. 4. A TLFA individual who has received three countable months can regain FAP eligibility by fulfilling the 80 hour requirement, by becoming deferred, or by engaging in self-initiated community service. BEM 620, pp. 9-10.

Individuals may be deferred from TLFA work requirements if there is a member of the FAP group that is under age 18, pregnant, physically or mentally unfit for employment, deferred from employment-related activities per BEM 230B, a victim of domestic violence, or chronically homeless. BEM 620, pp. 2-3. In relevant part, BEM 230B states that "persons...self-employed an average of 30 hours or more per week over the benefit period **or** earning on average the federal minimum wage times 30 hours per week are **not** required to participate in any further employment-related activities." BEM 230B (January 2018), p. 5.

If the client is not deferred from and fails to meet the work requirement in any given month, he or she is assessed a countable month. BEM 620, p. 1. However, the Department will delete the countable month if the client is later found to have good cause for failing to meet the work requirement. BEM 620, p. 9. Good cause includes personal illness, death or illness of a household member, the unavailability of transportation, lack of work, household emergency, or if the client is temporarily unfit for work. BEM 620, p. 6. Good cause is further described as a valid reason for failing to participate in work-related activities. BEM 233B (January 2019), p. 7. Examples include the unavailability of reasonably priced transportation and the client experiencing discrimination on the basis of age, race, disability, gender, color, national origin, or religious beliefs. BEM 233B, pp. 8-9.

Each of the three countable months were assessed by the Department after the Department determined that Petitioner did not meet the work requirement, was not

eligible for a deferral, and did not present good cause for noncompliance with the work requirement.

Petitioner disagrees with each of those findings and argued that she met the work requirement, should have been deferred due to meeting the work requirement as it applies to self-employment, and in any event should have been determined to have good cause because she was allegedly discriminated against on the basis of her sex and did not have reasonably priced transportation to participate in the work requirements. For the following reasons, each of Petitioner's positions is without merit.

First, Petitioner was not meeting the work requirement. Petitioner's testimony was that the bulk of her alleged self-employment time was spent working on her legal newsletter. By Petitioner's own testimony, that was not "work" as it is defined by Department policy because it was not in exchange for money, goods, or services. Rather, the time devoted to the legal newsletter, which made up most of Petitioner's alleged work time, is most accurately described as a hobby or leisurely activity. Thus, the hours devoted to that activity were properly not considered as going towards meeting Petitioner's work requirements. The remaining activities, which were similarly uncompensated, consisted of 20 hours or less per month, which is wholly insufficient to meet the work requirement, even if they are deemed to go towards meeting the requirement. Thus, Petitioner neither met the work requirement in the first instance nor presented sufficient evidence to establish that she should have been deferred for meeting the work requirement. Rather than working the required hours per week in self-employment, Petitioner worked approximately zero hours per week.

Next, Petitioner did not present evidence to establish that she had good cause for failing to meet the work requirement. Petitioner argued that sexual harassment causing her to lose a contract back in 2013 and the ramifications thereof constituted good cause for failing to fulfill the work requirements from December 2018 to February 2019. Petitioner failed to make any cogent argument as to why an incident from over five years ago had any bearing on her alleged inability to fulfill her work requirements today. Petitioner contended that she had enough time to spend 120 hours or so per month on an unpaid legal newsletter, requiring her to research and write articles on complex matters of law. It stands to reason that if the alleged discrimination is not debilitating enough to stop her from engaging in unpaid legal work, it would similarly be not debilitating enough to stop her from engaging in paid legal work or paid work of any kind in another field.

Finally, Petitioner's assertion that she had good cause based on a lack of reasonably priced transportation does not stand up to scrutiny. Petitioner received multiple notices from the Department that stated that the Department "will help [her] with transportation if needed to attend the MWA." Petitioner neglected to follow up on that offer of assistance. Additionally, Petitioner testified that she lives in a home with her parents, who allow her to use the family vehicle. Thus, in addition to not following up on offers of assistance that could have resolved an alleged lack of transportation, Petitioner seemingly had available transportation, even if said availability was sporadic.

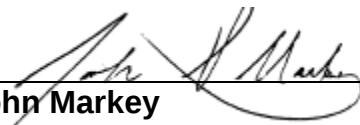
In each of the three countable months assessed by the Department, Petitioner failed to meet the work requirement, did not have a valid reason for a deferral from the work requirement, and failed to present good cause for her noncompliance with the work requirement. Thus, each of the three months were properly assessed. As Petitioner was still noncompliant in March 2019 after reaching her limit of three countable months, the Department properly closed Petitioner's FAP case, effective April 1, 2019.

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 acted in accordance with Department policy when it closed Petitioner's FAP benefits case, effective April 1, 2019.

DECISION AND ORDER

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

JM/cg



John Markey
Administrative Law Judge
for Robert Gordon, 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 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 Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Wayne-19-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]