



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: August 15, 2019
MOAHR Docket No.: 19-006301
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 August 7, 2019, from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by Valarie Foley, Hearings Facilitator. During the hearing, a 20-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-20.

ISSUE

Did the Department properly deny Petitioner's May 31, 2019 application for Food Assistance Program (FAP) benefits?

Did the Department properly determine Petitioner's eligibility for State Emergency Relief (SER) benefits for energy services?

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.
2. On November 1, 2018, the Department issued to Petitioner a Time Limited Food Assistance Notice informing Petitioner that he was required to engage in certain activities for a certain amount of time every month in order to retain eligibility for FAP benefits, effective December 1, 2019. Petitioner was informed that he would

only be eligible to receive three months of FAP benefits while not meeting those requirements. Exhibit A, pp. 4-5.

3. Petitioner did not meet those requirements for December 2018, January 2019, or February 2019. As Petitioner exhausted his three months of eligibility without meeting the requirements, his FAP case was closed, effective March 1, 2019. Exhibit A, pp. 6-15.
4. In [REDACTED] 2019, Petitioner submitted to the Department an application for SER benefits for energy services. Along with the application, Petitioner submitted bills from DTE Energy showing that he was subject to shutoff and had past due amounts of \$150.84 for non-heat electricity and \$161.78 for heat/gas. Exhibit A, pp. 18-19.
5. In mid-May 2019, Petitioner began working.
6. On [REDACTED], 2019, Petitioner submitted to the Department an application for FAP benefits. Along with the application, Petitioner submitted paycheck stubs showing that since he began working in mid-May, Petitioner had worked a total of 36 hours.
7. Petitioner's application for FAP benefits was denied because he did not meet the work requirements.
8. Petitioner's application for SER benefits was approved for a total of \$312.62, which represented the entire past due amount. Exhibit A, pp. 16-17.
9. On [REDACTED] 2019, Petitioner submitted to the Department a request for hearing objecting to the denial of his FAP application and the Department's eligibility determination with respect to his SER application.

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).

Petitioner submitted to the Department applications for SER and FAP benefits. His FAP application was denied. His SER application was approved. On [REDACTED] 2019, Petitioner submitted a timely hearing request objecting to the denial of his FAP application and the level of SER benefits for which he was approved.

FAP APPLICATION

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's application for FAP benefits was denied because the Department determined that Petitioner had exhausted his three countable TLFA months and had not met the work requirements for 30 days prior to the application. Petitioner argued that he in fact met the work requirements and cited paycheck stubs he submitted with the application as evidence thereof.

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, within any 3-day period after the last benefit month but prior to application, 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.

Petitioner received three TLFA countable months from December 2018 through February 2019. Effective March 1, 2019, Petitioner's FAP case was closed. Thus, per Department policy, Petitioner would only be eligible for FAP benefits if during any 30-day period after March 1, 2019 and prior to his [REDACTED] 2019 application, Petitioner met the work requirement, was deferred, or engaged in self-initiated community service. Petitioner presented no evidence that he should have been deferred or engaged in sufficient community service to meet the requirement.

Rather, Petitioner argued that his new employment satisfied the requirement. However, Petitioner acknowledged that he did not begin that job until mid-May 2019, and his application was filed on [REDACTED], 2019. At that point, Petitioner had only worked 36 hours total. Given that Petitioner's application was filed fewer than 30 days after he began working and he was not working prior, Petitioner necessarily did not meet the work requirement for 30 days prior to the application. Thus, the Department was compelled by policy to deny Petitioner's FAP application.

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 denied Petitioner's [REDACTED] 2019 application for FAP benefits.

SER APPLICATION

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

In this case, Petitioner submitted to the Department an [REDACTED] 2019 application for SER benefits for help with two energy bills. Along with the application, Petitioner submitted bills from DTE Energy showing that Petitioner was subject to having his non-heat electric and heat/gas services shut-off unless he paid his past due amounts. The non-heat electric past due amount was \$150.84. The heat/gas past due amount was \$161.78. In total, Petitioner's past due amount was \$312.62 at the time of Petitioner's application for SER assistance with his bills.

When an applicant's heat or electric service for his or her current residence is in past due status, in threat of shutoff or is already shut off and must be restored, the Department may authorize payment to the service provider. ERM 301 (March 2019), pp. 3-4. The amount of the payment is the minimum necessary to prevent shutoff or restore service, not to exceed the fiscal year cap. ERM 301, pp. 3-4. Current bills that are not subject to shutoff should not be included in the amount needed. ERM 301, p. 4.

The Department received Petitioner's application and promptly processed it, resulting in the April 29, 2019 State Emergency Relief Decision Notice approving Petitioner's application. The Department determined, based on the information available, that

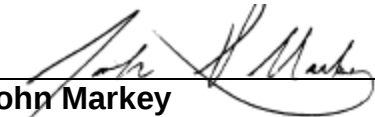
Petitioner's past due amount was, in total, \$312.62. The Department approved Petitioner for SER benefits of exactly that amount and remitted the money to DTE Energy, resulting in the full amount of Petitioner's past due amount being paid off. The Department approved Petitioner for the maximum amount of SER benefits that it could possibly approve. Petitioner's objection to the Department's action was that the Department should have paid the current charges in addition to the past due amount. However, as explained above, Department policy does not allow the Department to take the action requested by Petitioner.

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 approved Petitioner's SER application and paid the full amount of Petitioner's past due balance with DTE Energy.

DECISION AND ORDER

Accordingly, the Department's decisions are **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 Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Wayne-19-Hearings
M. Holden
D. Sweeney
T. Bair
E. Holzhausen
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]