



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 26, 2019
MOAHR Docket No.: 19-006761
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, an in-person hearing was held on August 21, 2019, from Detroit, Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by [REDACTED] Family Independence Specialist, and [REDACTED] Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Time Limited Food Assistance (TLFA) benefit?

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 FAP recipient participating under the TLFA requirements.
2. On April 18, 2019, the Department issued a Time Limited Food Assistance Third Countable Month/Out of State Countable Month Notice to Petitioner which stated in part "[e]ffective 04/01/2019 you have used two of your three Time Limited Food Assistance countable months. If you do not meet the Time Limited Food Assistance participation requirements this month, you will use your last countable month and your food assistance benefits will close..."

3. On April 29, 2019, the Department issued a Notice of Case Action to Petitioner informing him that effective May 1, 2019, his FAP benefits would close because he had used three TLFA countable months.
4. On June 25, 2019, the Department received Petitioner's request for hearing disputing the Department's decision to close his food assistance benefits.

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 decision to close his TLFA case because the Department had the wrong address on file for him so he was not informed of the TLFA requirements.

A TLFA individual must meet specific work requirements in order to receive FAP benefits. BEM 620 (January 2019), p. 1. If the individual fails to meet the requirements, their eligibility is limited to three months within a standardized 36-month period from January 1, 2017 through December 31, 2019 provided the individual meets all other FAP eligibility criteria. *Id.* Effective October 1, 2018, all counties in the State of Michigan are subject to TLFA requirements. *Id.*

All FAP recipients ages 18 through 49 are considered to be TLFA individuals unless they receive a deferral. *Id.* Deferral reasons include:

- A member of a FAP group that includes a FAP group member under age 18, even if the individual under age 18 is disqualified or otherwise not eligible; see BEM 212.
- In any stage of pregnancy.
- Determined to be medically certified as physically or mentally unfit for employment:
 - Participating in a Michigan Rehabilitation Services program.
 - Obviously mentally or physically unfit for employment, as determined by the worker.

- Deferred from employment related activities per BEM 230B.
- A victim of domestic violence.
- Chronically homeless.
- A person who provides care for a child under the age of six.
- A person who provides care for a disabled individual.
- Incapacitation due to injury, physical illness, or mental illness verified by:
 - A document from the Social Security Administration (SSA)
 - DHS-1552 Verification of Application or Appeal for Supplemental Security Income (SSI)/Retirement Survivors Disability Insurance (RSDI)
 - Third Party Single Online Query (SOLQ) ED-030
 - Consolidated Inquiry
 - An evaluation signed by a fully licensed psychologist that the client has an IQ of 59 or less
 - Statement from an MD/DO/PA that the person is unable to work.
 - The DHS-54A Medical Needs, DHS-49 Medical Examination Report, or DHS-40-D Psychiatric/Psychological Examination Report.
- Enrollment in post-secondary education program (potentially in ineligible Student Status pursuant to BEM 245).
- Employment of 30 hours or more per week or earning on average the federal minimum wage times 30 hours per week.
- Applicants for both SSI and FAP through the SSA made at the same time.
- Inpatient and outpatient substance abuse treatment center participation excluding Alcoholics Anonymous and Narcotics Anonymous group meetings.
- Applicant or recipient of unemployment benefits including those applications pending appeal.

BEM 620, pp. 2-3; BEM 230B (January 2018), pp. 4-6; BEM 230A (July 2018), p. 25.

For a FAP month not to be countable, a TLFA individual must perform one of the following activities:

- Work at least 80 hours monthly (20 hours/week on average).
 - Including work in exchange for money including self-employment.
 - Including work in exchange for goods or services (in-kind).
- Participate 80 hours monthly (20hours/week on average) in an employment and training program administered by the local Michigan Works! Agency (MWA) office
- A combination of work hours and MWA work hours, except for self-initiated community services, that averages 80 hours per month.
- Participate in MWA assigned workfare; the number of hours worked must at least equal the FAP benefit divided by minimum wage of \$9.25 per hour

- Engage in self-initiated community service activities for a non-profit organization where the number of hours worked is at least equal to the FAP benefit divided by minimum wage of \$9.25 per hour

BEM 620, p. 4.

A countable month is a calendar month in which a full FAP benefit is posted to an EBT account and the recipient does not meet a TLFA deferral or work requirement without good cause. BEM 620, p. 7. A month is not countable toward the three-countable-month limit for receipt of FAP benefits if the individual receives a prorated FAP benefit, meets the TLFA work requirement, receives FAP benefits erroneously and then pays them back in full, or is deferred from the work requirement on any day of the month. BEM 620, p. 8.

During the hearing, the Department failed to identify the three countable months in question. A review of the notice issued to Petitioner on April 18, 2019 which is titled for a “Third Countable Month” states within it that Petitioner has only used two of the three TLFA countable months. The notice does not identify the first month or a third month which was countable.

In addition, Petitioner raised the issue in his hearing request and at the hearing that the Department had an incorrect address on file for him which resulted in him not receiving notice of the TLFA requirements. Ordinarily, the proper mailing and addressing of a letter creates a presumption of receipt which may be rebutted by evidence. *Stacey v Sankovich*, 173 NW2d 225 688 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 241 NW2d 71 (1976); *Long-Bell Lumber Co v Nynam*, 108 NW 1019 (1906). Petitioner only became aware of the incorrect address after speaking with someone from the Department. According to Petitioner, he has never lived at the [REDACTED] Street address to which the April 18th and April 29th notices were mailed. However, none of the mail sent to the [REDACTED] address including the notices in April 2019 were returned as undeliverable. Petitioner is uncertain how the Department came to use this address because he previously lived on [REDACTED] Street in [REDACTED] and now lives on [REDACTED] Street in [REDACTED]. The Department is uncertain how the [REDACTED] address came to be in use and did not present the original application or any other evidence to support the use of the [REDACTED] address. Therefore, the evidence does not show that there was a proper addressing and mailing of the notices to Petitioner.

It should also be noted that once Petitioner became aware of the possibility of a deferral from the TFLA requirements via a phone conversation, Petitioner submitted a Medical Needs Form to the Department to support his disability status on June 20, 2019. If Petitioner had been properly informed of the requirements for TFLA and the possibility of a deferral based upon a disability, Petitioner may have submitted the information sooner and may have been eligible for a deferral for the months in question.

Since the Department failed to identify the three countable months for TLFA and because the Department failed to show that it had properly notified Petitioner of the three countable months or the closure of his food benefits, the Department has not met its burden of proof that the closure of his TLFA benefits was in accordance with policy.

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 closed Petitioner's FAP benefits.

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. Reinstate Petitioner's TLFA benefits effective May 1, 2019; and,
2. Remove the three countable months from Petitioner's TLFA benefits case;
3. Issue supplements to Petitioner for benefits not previously received effective May 1, 2019.

AM/tm



Amanda M. T. Marler

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

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

CC:

[REDACTED]
[REDACTED]