



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 1, 2019
MOAHR Docket No.: 19-006769
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 July 29, 2019, from Detroit, Michigan. The Petitioner was self-represented and had [REDACTED] from [REDACTED] appear as a support person. The Department of Health and Human Services (Department) was represented by [REDACTED] Assistance Payments Worker.

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. On January 4, 2019, the Department issued a Time Limited Food Assistance Month Redetermination Notice informing Petitioner that she might be subject to TLFA work requirements based upon information provided at the redetermination interview scheduled for February 1, 2019 and provided her with basic information about the work requirement.
2. On February 1, 2019, the Department issued a Notice of Missed Interview to Petitioner indicating that she had missed her scheduled interview appointment and that it was her responsibility to reschedule the interview before February 28, 2019 otherwise her application or redetermination would be denied.

3. On March 20, 2019, the Department issued a FAP Employment and Training Appointment Notice to Petitioner indicating that effective April 1, 2019, Petitioner was subject to TLFA work requirements, that her food benefits would be limited to three months over the next three years unless she participated in the employment or training program provided by Michigan Works! Agency (MWA) or engaged in community service for a nonprofit; Petitioner was scheduled for an MWA appointment on April 2, 2019 at 10:00 AM.
4. On the same day, the Department issued a Time Limited Food Assistance Notice informing Petitioner that effective April 1, 2019, she was subject to the TLFA work requirements and then the notice described to Petitioner methods of complying with the program requirements.
5. On April 29, 2019, the Department issued a Notice of Time Limited Food Assistance Countable Month/Out of State Countable Month to Petitioner informing her that April 2019 was the first month in which she did not meet the program work, training, or volunteer requirements and provided her information about how she could claim good cause for failing to meet program requirements.
6. On May 30, 2019, the Department issued a Notice of Time Limited Food Assistance Countable Month/Out of State Countable Month to Petitioner informing her that May 2019 was considered to be the second month in which she failed to meet program requirements and again explained the possibility of establishing good cause.
7. On June 17, 2019, the Department issued a Time Limited Food Assistance Third Countable Month/Out of State Countable Month Notice to Petitioner informing her that effective June 1, 2019, Petitioner had used two of her three TLFA countable months and if she did not meet participation requirements for June 2019, her food benefits would close.
8. Petitioner was issued food assistance benefits for March, April, and May of 2019 in the amount of [REDACTED].
9. The Department did not issue a food assistance benefit to Petitioner effective June 1, 2019.
10. On June 26, 2019, the Department received Petitioner's Request for Hearing disputing the Department's determination that she had not met the participation requirement for the TLFA program in addition to a Proof of Arrival and use of the Detroit Employment Solutions Corporation One Stop Center MWA for Orientation/Registration on June 18, 2019.

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 determination that she had not met the TLFA program requirements for work, training, or community service.

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 (January 2019), 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 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.

In situations where there are multiple TLFA individuals in the household, the TLFA requirements are individual requirements and not a group requirement. BEM 620, p. 5. If one group member fails to meet the requirement, that group member receives a countable month, but the other group members do not if they meet their own hour requirements. *Id.*

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, Petitioner argued first that she was eligible for a deferral from the TLFA requirements, second that she had personally met the requirements, and third that her son's employment hours should satisfy the TLFA requirements. Petitioner believes that she was eligible for a deferral because she was working to submit an application to the SSA for disability benefits. One application was submitted to SSA in January 2019; however, Petitioner rescinded that application and was working to submit a new application. As of the hearing date, Petitioner had not resubmitted her SSA application for disability benefits. In addition, Petitioner had not submitted proof to the Department of a completed SSA application. Since Petitioner had not completed the application or submitted proof of a completed application to the Department, she is not eligible for a deferral based upon an application for disability benefits. Next, Petitioner argued that she met the TLFA requirements by attending the orientation/registration at MWA on June 18, 2019. Attendance at the registration/orientation is not sufficient to meet the TLFA requirements because Petitioner had not completed enough hours. As discussed above, Petitioner is required to complete 20 hours of work on average per week or 80 hours per month. One day of registration and orientation does not suffice and Petitioner admits that she did not return to MWA to complete any additional hours. Finally, Petitioner argues that her son's work hours should be applicable to her TLFA requirements. However, as discussed above, each recipient of FAP benefits must complete their own TLFA requirements. If one individual in a group meets the requirements, but another does not, the one who failed to comply receives a countable TLFA month whereas the complying individual receives none. Based upon the evidence presented, Petitioner is not eligible for a deferral from the TLFA requirements nor has she met them in any month since March 2019.

The Department issued Petitioner FAP benefits for March through May 2019 and closed her FAP benefit as of June 2019. However, the Department also issued notices to Petitioner informing her that the TLFA requirement became effective as of April 2019, that April 2019 was the first countable month, and that May was the second countable month. Furthermore, in June 2019, the Department issued a final warning notice to Petitioner indicating that

[e]ffective 06/01/2019 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...

Since the Department advised Petitioner that her first TLFA month was effective April 1, 2019, the Department cannot use March 2019 as a countable month. Furthermore, since April 2019 was the first countable month and May 2019 was the second, Petitioner was still eligible for one countable month of FAP benefits for June 2019. The Department's closure of Petitioner's FAP benefits effective June 1, 2019 was premature. As indicated by the June 17, 2019 notice, Petitioner was required to meet the participation requirements for June 2019 otherwise her food benefits would close. Finally, the Department is required to issue a DHS-1606 Notice of Case Action with timely notice to clients when the countable months have been exhausted in order to close the case or remove a TLFA group member. BEM 620, p. 19. The Department failed to issue a Notice of Case Action to alert Petitioner to the closure of her FAP benefits or her removal from the FAP group.

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 did not act in accordance with Department policy when it closed Petitioner's FAP benefit effective June 1, 2019.

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. Issue a FAP supplement to Petitioner for June 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]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]

CC:

[REDACTED]
[REDACTED]