



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: September 25, 2019
MOAHR Docket No.: 19-008583
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 September 19, 2019 from Detroit, Michigan. Petitioner appeared and represented himself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator. During the hearing, a ten-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-10.

ISSUE

Did the Department follow law and Department policy when determining whether a member of Petitioner's household was subject to the Time Limited Food Assistance (TLFA) requirements of the Food Assistance Program (FAP)?

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. His household included his adult daughter, [REDACTED].
2. [REDACTED], at all times relevant to the instant case, was a full-time college student.
3. Petitioner made the Department aware that [REDACTED] had certain difficulties regarding her ability to work.
4. In June 2019, the Department issued to Petitioner a notice informing Petitioner that [REDACTED] was subject to the TLFA work requirements.

5. In July and August 2019, the Department assessed TLFA countable months against [REDACTED].
6. On August 8, 2019, Petitioner submitted to the Department a request for hearing objecting to the Department's determination that [REDACTED] was subject to the TLFA work requirements and once again asserting that [REDACTED] is physically or mentally unfit for employment.

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 objected to the Department's assessment of TLFA countable months against his daughter, [REDACTED], after [REDACTED] failed to meet the work requirements for at least two months. Petitioner contends that because [REDACTED] is a full-time college student who is mentally unfit for work, she should not be subject to the TLFA provisions.

All FAP individuals age 18 through 49 are TLFA unless deferred. BEM 620 (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. Pursuant to BEM 230B, an

individual enrolled in a post-secondary education program is deferred from the TLFA work requirements. BEM 230B (January 2018), pp. 3-5.

██████ was between the ages of 18-49. Thus, without any more information, she should have been subject to the TLFA work requirements. However, as ██████ was enrolled in a post-secondary education program at all times relevant to the instant matter, she was deferred from the TLFA work requirements. Thus, the Department's decision to assess TLFA countable months against her was improper. That, however, does not end the inquiry.

While a person enrolled in a post-secondary education program is deferred from the TLFA work requirements, that same person may be in student status. BEM 230B, p. 5. A person is in student status if the person is age 18 through 49 and enrolled half-time or more in a college or university. BEM 245 (January 2018), pp. 3-4. In order to for a person in student status to be eligible, the person must meet one of a number of listed criteria which includes, in relevant part, being mentally or physically unfit for employment. BEM 245, p. 4. If a person claims to be physically or mentally unfit for employment, the Department must seek to verify that claim, as it is a material factor impacting eligibility. BAM 130 (April 2017), p. 1.

██████ was in student status due to her age and enrollment in college. The Department received numerous reports from Petitioner alleging that ██████ is mentally unfit for employment. The Department, upon receiving those reports, was required to follow Department policy regarding verifying eligibility-related factors. The Department neglected to follow those policies. Instead, it wrongly continued to assess TLFA countable months against a deferred individual who should have been in student status. Whether ██████ was eligible despite her student status depends upon a finding regarding her fitness for work, which the Department never even began to assess. Before making that finding, the Department must allow Petitioner the opportunity to attempt to provide the verification required by BEM 245.

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 assessed TLFA countable months against ██████ and failed to act on Petitioner's assertion that ██████ was in student status and eligible due to allegedly being mentally unfit for employment.

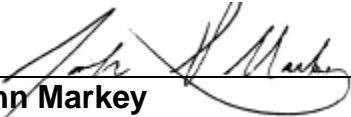
DECISION AND ORDER

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. Remove the TLFA countable months assessed against Aisha;
2. Determine whether [REDACTED] meets the requirements for being in student status and whether she is nonetheless eligible due to her alleged mental unfitness for work;
3. If any eligibility-related factors remain unclear, inconsistent, incomplete, or contradictory, follow Department policy regarding verifications;
4. Determine Petitioner's eligibility for FAP benefits;
5. If Petitioner is eligible for additional benefits, issue a supplement; and
6. Notify Petitioner in writing of its decisions.

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:

[REDACTED]

Petitioner – Via First-Class Mail:

[REDACTED]