



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
MI [REDACTED]

Date Mailed: October 30, 2019  
MOAHR Docket No.: 19-010443  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Kevin Scully**

### **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; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on October 24, 2019, from Lansing, Michigan. Petitioner was represented by himself. The Department of Health and Human Services was represented by Louis Mitchell.

### **ISSUE**

Did the Department of Health and Human Services (Department) properly close Petitioner's Food Assistance Program (FAP) benefits?

### **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 July 30, 2019, the Department notified Petitioner that July of 2019 was his third countable Time Limited Food Assistance month after receiving two other countable months for May and June of 2019. Exhibit A, pp 8-9.
2. On July 30, 2019, the Department notified Petitioner that he was not eligible for Food Assistance Program (FAP) as of August 1, 2019. Exhibit A, pp 6-7.
3. Petitioner submitted Self-Employment Income and Expense Statements and reported gross income of \$ [REDACTED] in July of 2019, \$ [REDACTED] in June of 2019, and \$ [REDACTED] in May of 2019. Petitioner reported that he worked 80 hours in each of these months. Exhibit A, pp 10-15.

4. On [REDACTED] [REDACTED] [REDACTED] the Department received Petitioner's request for a hearing protesting his disqualification from the Food Assistance Program (FAP). Exhibit A, pp 3-4.

### **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.

A Time-Limited Food Assistance (TLFA) individual must meet specific work requirements to receive benefits. Failure to do so limits the individual's Food Assistance Program (FAP) eligibility to three months within a 36-month period. TLFA individuals who meet all other FAP eligibility criteria are eligible for three countable months of FAP benefits during a 36-month period. The 36-month period is a standardized period. Effective October 1, 2018, all counties will be subject to TLFA policy, for both applicants and active cases. All FAP individuals age 18 through 49 are subject to TLFA unless deferred. Department of Health and Human Services Bridges Eligibility Manual (BEM) 620 (January 1, 2018), pp 1-2.

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. BEM 620, p 4.

Individuals may be deferred from TLFA if there is a member of the FAP group that is under age 18, pregnant, physically or mentally unfit for employment, or deferred from employment-related activities per BEM 230B. BEM 620, 2-3.

A TLFA individual will be found to have meet the requirements if a month was found to be countable due to late hour entry, a hearing decision, or meeting the work requirement. Verification of good cause is only required if the specialist considered the claim to be questionable. BEM 620, pp 3-5.

The Department will remove the countable month if the TLFA recipient had good cause for not meeting the requirements. A TLFA individual who worked or participate less than the required hours is considered to have met the work requirement if all the flowing conditions are met:

- The absence was due to circumstances beyond the individual's control.

- It was temporary.
- The individual has retained the job, MWA employment and training slot, workfare slot, or community service position.

BEM 620, pp 5-6.

A TLFA individual who has received three countable months can regain FAP eligibility for 80 hours of employment, by participating in community service, receiving a deferral from TLFA requirements, or deferral from employment-related activities per BEM 230B. BEM 620, pp 9-10.

A disqualified person is one who is ineligible for FAP because the person refuses or fails to cooperate in meeting an eligibility factor, including TLFA requirements. Department of Health and Human Services Bridges Eligibility Manual (BEM) 212 (July 1, 2019), pp 8-9. Other FAP group members may remain eligible even if one TLFA group member uses three countable months and is no longer eligible. BEM 620, p 8.

Petitioner was an ongoing FAP recipient as a group of one from May 1, 2019, through July 31, 2019. Petitioner reported that he was self-employed in each of those months and worked 80 hours per month.

The Department's representative testified that Petitioner must make minimum wage for the required 80 hours of work in each month for the month not to be considered a countable TLFA month. It was not disputed that the self-employment income reported by Petitioner was less than the equivalent of minimum wage for an 80-hour work month. The evidence does not support a finding that Petitioner was participating in a Michigan Works Agency assigned workfare, or that he was engaged in self-initiated community service activities. Department policy in BEM 620 requires that a TLFA individual that is working must work at least 80 hours monthly, and work includes work in exchange for money, including self-employment.

A FAP recipient can be deferred from TLFA requirements if deferred from employment activities per BEM 230B, which allows for a deferral for earning on average the federal minimum wage times 30 hours per week. Department of Health and Human Services Bridges Eligibility Manual (BEM) 230B (January 1, 2018), p 5.

The relevant issue here is not whether Petitioner should be deferred from TLFA requirements, but rather whether he met the TLFA work requirements. The Department did not dispute that Petitioner reported 80 hours of self-employment per month towards his TLFA requirement, but argued he failed to meet TLFA requirements by earning less than minimum wage.

The definition of "work" in BEM 620 includes work in exchange for money, including self-employment. BEM 620, p 4.

This is consistent with federal regulations, which defines work as work in exchange for money. 7 CFR 273.24.

Neither the federal regulations nor the Department policy include a minimum amount of income received in exchange for "work."

This Administrative Law Judge finds no basis for requiring Petitioner to receive self-employment exceeding the minimum wage for 80 hours per month and not receive a TLFA countable month.

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 Food Assistance Program (FAP) benefits for receiving three countable Time Limited Food Assistance (TLFA) months.

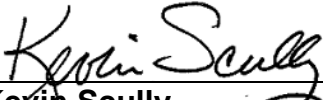
### **DECISION AND ORDER**

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:

Initiate a determination of Petitioner's eligibility for the Food Assistance Program (FAP) as of August 1, 2019, and delete the three countable TLFA months from Petitioner's benefit file.

KS/hb

  
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**Kevin Scully**  
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**

Denise McCoggle  
27260 Plymouth Rd  
Redford, MI 48239

Wayne County (District 15), DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

**Petitioner**

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[REDACTED], MI