



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: November 1, 2019
MOAHR Docket No.: 19-010498
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 October 24, 2019, from Lansing, Michigan. The Petitioner was represented by herself. [REDACTED] also appeared and testified for the Petitioner. The Department of Health and Human Services (Department) was represented by Barbara Schram FIM. Department Exhibit 1, pp. 1-10 was received and admitted.

ISSUE

Did the Department properly determine that Petitioner has countable months for the purpose of determining her Food Assistance Program (FAP) eligibility?

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 August 30, 2019, a Notice of Case Action was sent to Petitioner informing her that she had used all three countable months for Time Limited Food Assistance (TLFA).
2. On October 2, 2019, Petitioner's TLFA information in BRIDGES was updated to give her good cause for the months of July 2019 and August 2019.
3. On [REDACTED] [REDACTED] [REDACTED] Petitioner requested a hearing disputing the reduction of FAP benefits and the determination of countable months.

4. Petitioner does not have access to a vehicle and public transportation is not available in Petitioner's area.

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.

Good Cause for Work Absence

Good cause is having a valid reason for failing to work at least 80 hours monthly (20 hours/week on average), failure to participate in an employment and training program at the MWA or failure to participate in workfare or self-initiated community service. An individual who worked or participated less than the required hours is considered to have met the work requirement if all the following 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.

Document the good cause determination on the FAP Time-Limited Good Cause screen. Case comments detailing the reason for good cause are mandatory. The following are examples of good cause reasons:

- Personal illness.
- Death or illness of a household member requiring the presence of the TLFA recipient in the home.
- The unavailability of transportation.
- Lack of work (employer must verify).
- Household emergency.

- Temporarily unfit for work. BEM 620

In this case, initially the Department determined that Petitioner used all three of her countable months for Time Limited Food Assistance and failed to become eligible for additional months by failing to participate in Employment, Self-Initiated Community Services or Michigan Works! Agency activities for 80 hours a month. A Notice of Case Action was sent to Petitioner informing her that her FAP benefits would be reduced to \$192 effective September 1, 2019, after she was removed from the group. (Ex. 1, pp. 1-5)

At hearing, the Department explained that they changed their position and gave Petitioner good cause for failing to fulfill TLFA requirements due to lack of transportation for two months, September and October 2019. A Department policy analyst advised that good cause could be given for “a month or two” while they figured out their transportation barrier. She also advised to assist the client if the Department can assist with resolving the transportation barrier. (Ex. 1, p.8) The Department determination that Petitioner will have countable months from November 2019 going forward is a negative action and a hearable issue.

Petitioner credibly testified that she does not have a car and there is no public transportation in her area, [REDACTED]. The Department did not dispute at hearing that Petitioner has a lack of transportation. Petitioner has good cause for failing to fulfill TLFA requirements due to lack of transportation under BEM 620. Department policy does not delineate how long a good cause reason for unavailability of transportation is allowed. Therefore, the Department’s position that Petitioner should only be given good cause for two months is not supported by Department policy. BEM 620 Department policy does have language that dictates that the absence is “temporary”. The term temporary is not defined in Department policy. The Department’s position that good cause for lack of transportation can be given for “a month or two” is arbitrary.

It should also be noted that the Department did not present any evidence regarding what measures were taken by the Department to resolve Petitioner’s lack of transportation.

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 determined that Petitioner should only be given good cause for lack of transportation for two months. BEM 620

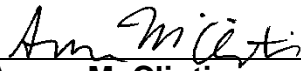
DECISION AND ORDER

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. Correct the record to reflect that Petitioner has good cause due to lack of transportation and is not given countable months for the time period when she had good cause for failing to comply with TLFA requirements due to lack of transportation.

AM/hb



Aaron McClintic
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

Barbara Schram - 35
2145 East Huron Road
East Tawas, MI 48730

Iosco County, DHHS

BSC1 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]