



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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[REDACTED]

Date Mailed: November 12, 2019
MOAHR Docket No.: 19-010965
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 November 7, 2019, from Detroit, Michigan. Petitioner was present and represented himself. The Department of Health and Human Services (Department) was represented by Markita Mobley, Hearing Facilitator and Debra Hodges, Family Independence Specialist.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefit case?

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.
2. On July 23, 2019, the Department sent Petitioner a Time Limited Food Assistance Notice, stating that effective July 1, 2019, he would be subject to the Time Limited Food Assistance (TLFA) work requirements (Exhibit A, p. 5).
3. On July 23, 2019, the Department sent Petitioner a Medical Needs form (Exhibit A, p. 6).
4. On September 6, 2019, Petitioner submitted letters from his physicians (Exhibit A, pp. 14-18).

5. On October 7, 2019, the Department sent Petitioner a Notice of Case Action informing him that his FAP benefit case was closing effective October 1, 2019, ongoing (Exhibit A, pp. 12-13).
6. Petitioner submitted a request for hearing disputing the Department's actions.

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 was an ongoing FAP recipient. On July 23, 2019, the Department sent Petitioner a notice stating that he was subject to the TLFA work requirements effective July 1, 2019. The Department also sent Petitioner a Medical Needs form.

Effective October 1, 2018, clients must meet specific TLFA work requirements as a condition of FAP eligibility. BEM 620 (July 2018), p. 1. All FAP individuals age 18 through 49 are TLFA unless deferred. BEM 620, p. 1. Failure to do so limits the individual's FAP 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. BEM 620, p. 1.

In order for a FAP benefit month to not be countable, a TLFA individual must perform one of the following: (i) work at least 80 hours monthly (20 hours/week on average); (ii) participate in Michigan Works! Agency (MWA) 80 hours monthly; (iii) work and participate in MWA combined for 80 hours monthly; (iv) participate in MWA-assigned Workfare with the number of hours worked at least equal to the FAP benefit divided by the \$9.25 minimum wage; or (v) engage in self-initiated community service activities for a non-profit organization with the number of hours worked at least equal to the FAP benefit divided by the \$9.25 minimum wage. BEM 620, pp. 1-3.

To be deferred from TLFA policy an individual must be one of the following: (i) 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; (ii) in any stage of pregnancy (iii) determined to be medically certified as physically or mentally unfit for employment which includes participating in a Michigan Rehabilitation Services program, obviously mentally or physically unfit for employment, as determined by the worker, a

victim of domestic violence or chronically homeless; or (iv) deferred from employment-related activities per BEM 230B. BEM 620, pp. 1-2.

Per BEM 230B, a person can be deferred if they are incapacitated due to injury, pregnancy complication, physical illness or mental illness. BEM 230B, p. 4. Verifications sources of a disability includes as follows: (i) approval of State Supplemental Security (SSI)/Retirement Survivors and Disability Insurance (RSDI)/Medical Assistance (MA) approval or receipt based on a disability; (ii) an evaluation signed by a fully licensed psychologist that the client has an IQ of 59 or less; (iii) statement from an M.D./D.O./P.A. that the person is unable to work; (iv) a Medical Needs, Medical Examination Report, Psychiatric/Psychological Examination forms or another written statement; or (V) medical documentation of a pregnancy complication confirmation by an M.D./D.O./P.A., certified nurse-midwife, ob-gyn nurse practitioner or ob-gyn clinical nurse specialist. BEM 230B, p. 5. However, the Department is only to seek verification of a medical deferral in cases where the unfitness is not obvious to the specialist. BEM 620, p. 21.

The Department testified that Petitioner failed to timely submit verification of a disability to defer him from the TLFA work requirements. The Department stated that Petitioner did not meet the TLFA work requirements for July, August and September 2019. As a result, the Department closed his FAP benefit case effective October 1, 2019, ongoing.

It is unclear why the Department determined Petitioner was not entitled to a deferral from the TLFA work requirements. Petitioner submitted letters signed by M.D.s stating he could not work due to a disability from July 9, 2019 to August 10, 2019 (Exhibit A, p. 17); from August 8, 2019 to September 8, 2019 (Exhibit A, p. 16); and August 27, 2019 to September 27, 2019 (Exhibit A, p. 15). Petitioner submitted the letters to the Department on September 6, 2019, prior to the closure of his FAP benefit case. Per policy, a statement from an M.D. stating that the client is unable to work is sufficient to grant a deferral from the TLFA requirements. A Medical Needs form is not mandatory to grant a deferral. The letters provided from Petitioner cover almost the entire period of July, August and September 2019. Therefore, Petitioner should have been deferred from the TLFA work requirements during that period. Thus, the Department did not act in accordance with policy when it closed Petitioner's FAP benefit case.

DECISION AND ORDER

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 case.

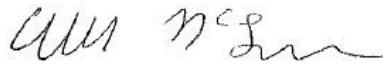
Accordingly, the Department's decision is **REVERSED**.

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. Redetermine Petitioner's FAP eligibility as of October 1, 2019, ongoing;
2. Remove the three TLFA countable months between July 1, 2019 and September 30, 2019;
3. If Petitioner is eligible for FAP benefits, issue supplements he is entitled to receive; and
4. Notify Petitioner of its decision in writing.

EM/cg



Ellen McLemore

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:

MDHHS-Wayne-55-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]