



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: January 24, 2020
MOAHR Docket No.: 19-013205
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 January 21, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Richard Merrill, supervisor.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility beginning December 2019.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of July 2019, Petitioner was an ongoing recipient of FAP benefits and subject to time-limited food assistance (TLFA) requirements.
2. On July 11, 2019, MDHHS mailed Petitioner a notice stating she was subject to TLFA requirements. The notice also informed Petitioner of an optional appointment with a Michigan Works! Agency (MWA). Exhibit A, pp. 59-60.
3. On August 27, 2019, MDHHS mailed Petitioner a Time Limited Food Assistance Notice stating that Petitioner did not meet FAP-participation requirements in August 2019. Exhibit A, p. 8.

4. On October 4, 2019, MDHHS mailed Petitioner a Time Limited Food Assistance Notice stating that Petitioner was subject to TLFA requirements.¹ Exhibit A, pp. 19-21.
5. On October 17, 2019, MDHHS mailed Petitioner a notice informing Petitioner of using two countable TLFA and warning that a third countable month would result in closure of FAP.
6. On October 30, 2019, MDHHS mailed Petitioner a Time Limited Food Assistance Notice stating that Petitioner did not meet FAP-participation requirements in October 2019. Exhibit A, pp. 22-23.
7. On November 13, 2019, MDHHS terminated Petitioner's FAP eligibility beginning December 2019 due to Petitioner failing to meet TLFA requirements after accumulating three countable months. Exhibit A, pp. 10-13.
8. On December 3, 2019, MDHHS mailed Petitioner a Time Limited Food Assistance Notice stating that Petitioner did not meet FAP-participation requirements in November 2019. Exhibit A, p. 7.
9. On [REDACTED] 2019, Petitioner requested a hearing to dispute the termination of FAP benefits in December 2019. Exhibit A, p. 4.

CONCLUSIONS OF LAW

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing to dispute FAP eligibility. Petitioner's hearing request stated in full, "I would like to appeal the denial of December 2019 food benefits." Exhibit A, p. 4. Petitioner testified that she also wanted to dispute her FAP eligibility from previous months when she was a member of her mother's FAP group rather than a member of her own FAP group. Administrative hearing jurisdiction is limited to disputes stated within, or reasonably inferred from, a client's hearing request. Because Petitioner failed to provide notice of her dispute concerning group size, the analysis will not consider Petitioner's dispute. The analysis will consider Petitioner's FAP eligibility for December 2019 as it was a disputed stated within Petitioner's hearing request. A Notice of Case Action dated November 13, 2019, stated that MDHHS terminated Petitioner's

¹ MDHHS likely sent the notice after Petitioner's FAP group eligibility changed to a 1-person group after being a member in her mother's group.

FAP eligibility beginning December 2019 due to Petitioner using three countable TLFA months.

A TLFA individual must meet specific work requirements to receive FAP benefits. BEM 620 (January 2019), p. 1. Failure to do so limits the individual's eligibility to three months within a 36-month period. *Id.* The current 36-month period runs from January 1, 2017 through December 31, 2019. *Id.*² TLFA individuals who meet all other FAP eligibility criteria are eligible for three countable months of FAP benefits during a 36-month period. *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. *Id.*, p. 7.

All FAP individuals aged 18 through 49 are subject to TLFA requirements unless deferred. *Id.*, p. 2. Deferral reasons include the following:

- Being a member of a FAP group including a child under age 18
- Pregnancy
- Unfit for employment based on medical certification
- A victim of domestic violence
- Chronically homeless
- Deferred from employment activities under BEM 230B.

Id. pp. 2-3.

During all of Petitioner's countable months, Petitioner was aged from 18 to 49 years and no evidence suggested that Petitioner should be otherwise deferred from TLFA requirements. Given the evidence, Petitioner was subject to TLFA requirements.

For a FAP benefit month not to be countable, a TLFA individual must perform one of the following:

- Work at least 80 hours monthly (20 hours/week on average). Work includes:
 - Work in exchange for money, including self-employment.
 - Work in exchange for goods or services (in-kind).
- Participate 80 hours monthly (20 hours/week on average) in an employment and training program administered by the local Michigan Works! Agency (MWA) if available in the county.
- Individuals in an MWA employment and training component cannot be required to participate more than 30 hours per week. The MWA may permit a participant to substitute hours of education to meet the 80-hour requirement.
- Combine work hours and MWA work hours, except workfare or self-initiated community service, that total an average of 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 (\$9.25/hr.), as determined by Bridges.

² The disputed benefit month of December 2019 falls within the "current" period. The hearing was conducted on a date within the following 36-month period.

- Engage in self-initiated community service activities for a non-profit organization. The number of hours worked must equal the FAP benefit amount divided by minimum wage (\$9.25/hr.), as determined by Bridges.
Id., p. 4.

MDHHS alleged that Petitioner failed to meet TLFA requirements from August 2019 through November 2019. MDHHS presented documentation mailed to Petitioner dated July 11, 2019, informing her that she was subject to TLFA requirements. Exhibit A, pp. 59-60. The notice also explained how Petitioner could comply with TLFA requirements through work, MWA participation and/or community service. Additionally, MDHHS provided Petitioner with an optional appointment at MWA. The evidence established that MDHHS properly advised Petitioner of her TLFA requirements.

Petitioner contended that she was unaware of her TLFA requirements. Petitioner's claimed unawareness of TLFA requirements was contradictory to multiple notices sent by MDHHS which advised Petitioner of TLFA and how she could meet TLFA requirements. In addition to the notice sent on July 11, 2019, MDHHS sent a second notice to Petitioner on October 4, 2019.

Petitioner also testified that she received mail untimely from MDHHS due to unspecified holidays. Petitioner's argument was uncorroborated and appears wholly unrelated to notices explaining TLFA requirements sent to Petitioner in August, September, and October.

MDHHS presented a list of months when Petitioner failed to meet TLFA requirements. Exhibit A, p. 6. Months from August 2019 through October 2019 were listed. In a notice sent to Petitioner dated October 17, 2019, MDHHS informed Petitioner that she had used two countable months and warned a third would result in case closure. Exhibit A, pp. 69-70. Additionally, MDHHS provided a notice dated October 30, 2019, stating that October 2019 was Petitioner's third countable month.


It was not disputed that Petitioner failed to submit to MDHHS any proof of meeting TLFA from August 2019 through October 2019. Petitioner contended that had she known of TLFA she would have brought proof of her recent MWA participation and/or recent employment to the hearing. Notably, Petitioner had not reported employment to MDHHS before the hearing despite an obligation for all clients to report employment income to MDHHS within 10 days. BAM 105 (October 2019) p. 12.

Given the evidence, Petitioner did not meet TLFA work requirements from August 2019 through October 2019. Thus, MDHHS properly counted each month as a countable month in terms of Petitioner not meeting TLFA requirements. As a client subject to TLFA requirements with three countable months, MDHHS properly terminated Petitioner's FAP eligibility beginning December 2019.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly terminated Petitioner's FAP eligibility beginning December 2019. The actions taken by MDHHS are **AFFIRMED**.

CG/cg



Christian Gardocki
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-Monroe-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

