



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]
[REDACTED]

Date Mailed: February 5, 2020
MOAHR Docket No.: 19-013212
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 January 30, 2020, from Detroit, Michigan. Petitioner was present with her Authorized Hearing Representative (AHR), [REDACTED]. The Department of Health and Human Services (Department) was represented by Assistant Attorney General, Elizabeth Husa-Briggs. The witnesses present on behalf of the Department were Cheryl Watkins, Assistance Payments Supervisor and Ryan Tabb, Eligibility 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. On September 20, 2019, Petitioner submitted an application for FAP benefits (Exhibit A, pp. 17-23).
2. Petitioner was approved for FAP benefits (Exhibit A, p. 31).
3. In October 2019, Petitioner reported that she was no longer working.
4. On October 29, 2019, the Department sent Petitioner a Benefit Notice informing her that her FAP benefit case was closing effective December 1, 2019, ongoing, as

she had exceeded the Time Limited Food Assistance (TLFA) countable month limit (Exhibit A, pp. 10-11).

5. On December 12, 2019 and December 20, 2019, Petitioner submitted requests for hearing. The requests for hearing were both disputing the Department's decision to close Petitioner's FAP benefit case. Both hearing requests were consolidated into the present case.

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 submitted an application for FAP benefits on September 20, 2019. At the time of the application, Petitioner was working and satisfying the TLFA requirements. As a result, Petitioner was approved for FAP benefits. However, subsequent to the application approval, Petitioner reported she had lost her employment. The Department testified that Petitioner had three countable months during January 2018, February 2018 and March 2018. As Petitioner was no longer working, and had three countable months, the Department closed her FAP benefit case.

Effective January 1, 2017, individuals in Time Limited food Assistance (TLFA) counties, such as Washtenaw County, 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.

The Department presented the MDHHS-5501, Notice of Time Limited Food Assistance Countable Month/Out of State Countable Month, issued on March 20, 2018, informing Petitioner that she was receiving a TLFA countable month for March 2018. The Department stated March 20, 2018 notice was the third notice issued to Petitioner, for her third countable month.

The Department testified that Petitioner had previously been deferred from the TLFA requirements, as she had been coded as disabled. The Department did not know the period in which Petitioner had been coded as disabled or the reason for which she was coded as disabled. The Department testified that on September 23, 2019, an interview was conducted with Petitioner related to the September 20, 2019 application (Exhibit A, pp. 26-27). The worker that conducted the interview stated that Petitioner had indicated in her application that she was disabled. However, at the interview, Petitioner reported that she was not disabled. Therefore, the Department did not consider any disability or physical/mental unfitness as a reason to consider Petitioner for a deferral from the TLFA requirements. As it follows, the Department did not send Petitioner any requests for verification of a potential disability or mental/physical impairment (Exhibit A, p. 28).

The Department presented Petitioner's Work Number report showing that she had been employed at [REDACTED], but her employment terminated effective September 30, 2019 (Exhibit A, p. 16). Petitioner had also been employed at [REDACTED] but her employment terminated effective August 22, 2019 (Exhibit A, p. 14). The Department utilized the Work Number reports to verify Petitioner was no longer employed. As Petitioner was no longer employed, was not deferred, and had received three countable months, the Department closed Petitioner's FAP benefit case.

At the hearing, Petitioner alleged that she has a mental disability due to mental health issues, as well as difficulties with reading comprehension. Petitioner stated that during the September 23, 2019 interview, she was asked if she was blind or had a physical disability, to which she answered no. Petitioner testified she was not asked about any mental disabilities. As such, Petitioner did not report any disability in the interview. Petitioner testified that she has difficulties completing paperwork and complying with various eligibility requirements set forth by the Department. At the interview, Petitioner stated that she requested to meet with her worker in-person to further discuss her eligibility. The request was denied. The Department confirmed that Petitioner requested to meet in person. Petitioner contended that she was not aware that a verified disability or inability to work due to mental/physical unfitness was a reason to be deferred from

the TLFA requirements. As such, Petitioner did not know that she needed to put the Department on notice of her potential mental disability. Petitioner testified that she applied for Social Security benefits related to her disability in October 2019.

It is evident from the facts of the hearing that there was a significant miscommunication between Petitioner and the Department. Petitioner does not speak English as a first language, which exacerbated the communication issues. Although the Department may have believed Petitioner reported that she was not disabled, there was conflicting information and indications that Petitioner was potentially disabled. The Department itself had coded Petitioner as disabled for a period of time. Petitioner reported in the application that she was disabled. It is also problematic that Petitioner does not speak English as a first language, and that she requested an in-person interview. Clients have the right to request an in-person interview. BAM 115 (January 2018), p. 1. Additionally, the Department is to obtain verification when information regarding an eligibility factor is unclear, inconsistent, incomplete or contradictory. BAM 130 (April 2017), p. 1. Therefore, the Department erred when processing Petitioner's FAP benefit case. Thus, the Department failed to establish that it acted in accordance with policy when it closed Petitioner's FAP benefit case.

It should also be noted that the TLFA initial period ended December 31, 2019. BEM 620, p. 1. The current period began effective January 1, 2020. BEM 620, p. 1. As such Petitioner's three countable months from 2018 should no longer be considered effective January 1, 2020.

DECISION AND ORDER

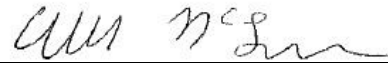
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Petitioner's FAP benefit case.

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 December 1, 2019, ongoing;
2. If Petitioner is eligible for FAP benefits, issue supplements she is entitled to receive; and
3. 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-Washtenaw-20-Hearings
AG-HEFS-MAHS
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

**Petitioner –
Via First-Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

**Authorized Hearing Representative –
Via First Class Mail:**

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]