



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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Date Mailed: February 21, 2020  
MOAHR Docket No.: 20-000158  
Agency No.: ██████████  
Petitioner: ██████████

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

### **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 February 12, 2020 from ██████████ Michigan. The Petitioner was self-represented. The Department of Health and Human Services (Department) was represented by Eileen Kott, Family Independence Manger, and Tamer Hassan, Assistance Payments Worker.

### **ISSUE**

Did Petitioner submit a timely hearing request?

Did the Department properly deny Petitioner's Application for Family Independence Program (FIP) 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. Petitioner has been an on-and-off recipient of FIP.
2. On September 15, 2014, the Department issued a Notice of Case Action to Petitioner informing her that her FIP case had been reinstated with no loss of benefits but that she should know that in the near future, "the computer will be closing [her] fip cash payment case... because of the State of Michigan time limits of 48 months..."

3. On December 2, 2014, the Department issued a Notice of Case Action to Petitioner informing her that her FIP case was closing effective January 1, 2015 because “group is not eligible because no group member is an eligible child” and because “you failed to verify or allow the dept to verify information necessary to determine eligibility for this program.”
4. Petitioner did not receive FIP benefits between 2015 and 2019.
5. In 2019, Petitioner submitted a new application for FIP benefits.
6. On December 13, 2019, the Department issued a Notice of Case Action to Petitioner informing her that Application for FIP had been denied effective May 16, 2019 because Petitioner had received 48 months or more of benefits, which is the time allowed for eligibility.
7. On January 2, 2020, the Department received Petitioner’s request for hearing disputing the Department’s denial of her FIP Application and count of 48 months

### **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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Department of Human Services) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101-.3131.

In this case, Petitioner disputes the Department’s denial of her FIP application. The Department asserts that Petitioner’s hearing request is untimely and should be dismissed. Policy provides that in order to have a timely hearing request, the Department must receive the client’s request for hearing within 90 days of the Notice of Case Action. BAM 600 (July 2019), p. 6. The Department believes that Petitioner’s request for hearing is untimely because the issue of Petitioner’s countable months for purposes of FIP benefits was decided by the Department in 2014. In December 2014, policy also required that hearing requests be received by the Department within 90 days of a notice of case action and that the Department was required to issue to the client a written notice explaining “all case actions affecting eligibility or amount of benefits.” BAM 600 (October 2014), pp. 1, 6. The notice was required to include the actions being taken by the Department, the reason or reasons for the action, and the specific manual citation which cited the legal basis for the action such as the regulation or law. In 2014, the Department issued two Notices of Case Action to Petitioner regarding her FIP

eligibility. The first Notice of Case Action informed her that her FIP benefits were reinstated but had a note from her caseworker that her FIP case would close in the future, on an unspecified date, due to an unspecified state law that an individual can only receive 48 months of State of Michigan cash assistance. The second notice from December 2014 informed Petitioner that her FIP benefits were closing effective January 1, 2015 because she had failed to verify information necessary to determine eligibility and that there were no eligible children in the group. Neither notice complied with the notice requirements regarding the countable months' time limit for purposes of FIP benefits. Therefore, Petitioner was not properly afforded an opportunity to dispute the issue. More importantly, the Department issued a new notice in 2019 indicating that Petitioner was not eligible for FIP because of the 48-month time limit after submitting a new application. This notice identified the program, the reason, the policy, the law, and the code relied upon for the Department's decision. This was the only notice of its nature regarding the time limits. Even if Petitioner had received notice in the past regarding her FIP countable months, the new notice issued in December 2019 affords Petitioner a right to request a hearing based on the denial reason listed on the Notice of Case Action. Therefore, Petitioner's request for hearing is timely and an analysis of the Department's decision from December 2019 follows below.

The FIP is a program which is funded primarily by the Temporary Assistance to Needy Families (TANF) program, a program created and monitored by the federal government. BEM 234 (July 2013), p. 1. TANF has a 60-month lifetime limit on assistance for adult-headed families beginning October 1, 1996. *Id.* Each month an individual receives federally funded FIP, the individual receives a count of one month. BEM 234, p. 2. A family is ineligible when a mandatory member of the FIP group reaches the 60 TANF-funded month federal time limit. *Id.* Since FIP is also funded by State funds and not exclusively by Federal funds, a State FIP lifetime limit is also applied. BEM 234, p. 4. The State lifetime limit is 48 months, effective October 1, 1996. *Id.* Each month an individual receives FIP benefits while in Michigan is counted towards the limit, regardless of the funding source. *Id.* A family is ineligible for FIP when a mandatory group member in the program group reaches the 48-month state time limit. *Id.* Any month that is state-funded is not a countable month toward the federal time limit count. BEM 234, p. 3. However, months which are federally funded are countable toward the state counter unless a deferral or exemption applies. *Id.*

Michigan provides an exception to the federal 60-month time limit and will state-fund the FIP group for individuals that met the following criteria on January 9, 2013:

- An approved/active ongoing FIP group **and**
  - Who was exempt from participating in the Partnership. Accountability. Training. Hope. (PATH) program for Domestic Violence.
  - Age 65 or older.
  - Establishing incapacity.
  - Incapacitated more than 90 days.

- Care of a spouse with disabilities.
- Care of a child with disabilities.

BEM 234, p. 2. The exception continues so long as the individual's ongoing FIP group reaches 60 TANF federal months **and** the individual remains in one of the above employment deferral reasons. If they remain in an employment deferral reason, the group will become state-funded after the 60<sup>th</sup> month, or so long as the individual, at application, is approved as any of the above employment deferral reasons. *Id.* The exception ends, and the case is closed; or the application is denied, when one of the above individuals no longer qualifies for one of the above employment deferral reasons or they no longer meet other standard eligibility criteria for FIP. *Id.*

In addition, the Department will state-fund FIP assistance in limited circumstances for individuals who have met the federal time limit. BEM 234, p. 3. The Department has decided to state-fund FIP groups who have exceeded the Federal FIP time limit if the group has an adult who has accumulated more than 60 months on the counter but meets a federal time limit exception criterion, among other things. BEM 234, p. 3 An exemption from the state time limit allows an individual to receive FIP without a count towards the state limit, but the federal time limit continues unless the exemption is state-funded. BEM 234, p. 4. Effective October 1, 2011, exemption months are months the individual is deferred from Partnership. Accountability. Training. Hope. (PATH) for:

- Domestic Violence
- Age 65 or older
- A verified disability or long-term incapacity lasting longer than 90 days
- A spouse or parent who provides care for a spouse or child with verified disabilities living in the home.

*Id.*; MCL 400.57p; MCL 400.57f(3); MCL 400.54f(4)(b, e, f); MCL 400.56i.

In reviewing the Michigan FIP time limits count for Petitioner, Petitioner had countable months from November 2009 through September 2010 (11 months), January 2011 and February 2011 (2 months), and June 2011 through March 2014 (34 months). These months combined total 47 countable months. Between May 2014 and December 2014 (8 months), Petitioner also received FIP benefits which the Department counted toward her time limits. In each of these months, Petitioner was listed as "Incapacitated to Work." According to the Department's records, Petitioner's "incapacity to work" lasted 8 months. Therefore, Petitioner had a verified disability or incapacity lasting longer than 90 days. Petitioner should have been exempted from the FIP counter for May 2014 through December 2014. BEM 230A (October 2013), p. 11; BEM 234 (July 2013), p. 4. Since Petitioner should have been exempted, Petitioner still has one month left under the 48-month time limit and her Application for FIP should not have been denied based upon the State time limit.

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 denied Petitioner's FIP Application based upon the State FIP time limit.

**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. Remove from the counter May 2014 through December 2014 or reclassify May 2014 through December 2014 as non-countable months for the State FIP counter;
2. Reprocess Petitioner's 2019 Application for cash assistance;
3. If otherwise eligible, issue a supplement to Petitioner or on her behalf for benefits not previously received; and,
4. Notify Petitioner in writing of its decision.

AMTM/jaf



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**Amanda M. T. Marler**  
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**

Dora Allen  
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