



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR



Date Mailed: February 28, 2020  
MOAHR Docket No.: 20-000527  
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 February 18, 2020, from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Mildred Wheeler, supervisor.

### **ISSUE**

The issue is whether MDHHS properly denied Petitioner's application dated August 30, 2019, requesting Food Assistance Program (FAP) 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. On August 30, 2019, Petitioner applied for FAP benefits.
2. On an unspecified date, Petitioner claimed he was disabled and should be deferred from time-limited food assistance (TLFA) requirements.
3. On September 24, 2019, MDHHS denied Petitioner's FAP application due to Petitioner having three countable TLFA months.
4. On November 14, 2019, an administrative hearing was held concerning the denial of Petitioner's FAP application dated August 30, 2019.

5. On November 14, 2019, MDHHS mailed Petitioner a Medical Determination Verification Checklist requesting a TLFA 8-18 and Medical Needs form.
6. On November 21, 2019, an administrative law judge ordered MDHHS to reinstate Petitioner's application and to issue a verification checklist regarding Petitioner's claim of deferral from TLFA due to disability.
7. On November 22, 2019, Petitioner submitted to MDHHS a Medical Needs form from a physician who stated that Petitioner could perform sit-down employment.
8. On November 22, 2019, MDHHS denied Petitioner's application dated August 30, 2019, based on Petitioner having three countable TLFA months and no basis for deferral from TLFA due to disability.
9. On [REDACTED], 2020, Petitioner requested a hearing to dispute the second denial of his FAP application.

### **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 the denial of an application requesting FAP benefits dated August 30, 2019. Exhibit A, pp. 2-3 MDHHS presented a Benefit Notice dated November 22, 2019, stating that Petitioner's application was denied due to Petitioner having three countable TLFA months and not otherwise being deferred from TLFA requirements.

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.*<sup>1</sup> 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

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<sup>1</sup> "Current" is interpreted as current as of the benefit months disputed by Petitioner.

- 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.

Petitioner contended that he was not subject to TLFA requirements, and therefore, his FAP application should not have been denied. The basis of Petitioner's contention is that he was disabled, and therefore, should be deferred.

MDHHS is to defer persons from TLFA requirements who are incapacitated due to injury, pregnancy complication, physical illness or mental illness. BEM 230B (January 2018) p. 1. MDHHS is to verify a reason for deferral only if it is not obvious and the information provided is questionable (unclear, inconsistent or incomplete). *Id.* Sources that may be used to verify questionable information include a DHS-54A and/or statement from a physician that a client is unable to work. *Id.* Petitioner did not have an "obvious" disability; therefore, MDHHS needed to verify his disability.

MDHHS mailed Petitioner a Medical Determination Verification Checklist on November 14, 2019, giving Petitioner until November 25, 2019 to return a Medical Needs form and TLFA 8-18.<sup>2</sup> MDHHS testimony indicated that a TLFA 8-18 was neither sent nor required. Petitioner returned to MDHHS, a Medical Needs form on November 22, 2019, completed by a physician treating him for knee problems. The form stated that Petitioner could perform sit-down employment. MDHHS interpreted Petitioner's ability to perform sit-down employment as verification that Petitioner should not be deferred under BEM 230B. Based on Petitioner not being deferred from TLFA requirements, MDHHS again denied Petitioner's application because Petitioner had three countable TLFA months.

Petitioner testified that the Medical Needs form was completed by a doctor treating him for knee problems, and not his primary care physician (PCP). Petitioner testified he wanted his PCP to complete the form, but he could not get an appointment until after his checklist due date of November 25, 2019. Petitioner's testimony was consistent with a disability certificate signed by Petitioner's physician on December 6, 2019, which stated that Petitioner was disabled for the following 30 days. Exhibit A, p. 29. Petitioner testified that he submitted the disability certificate to MDHHS in December 2019 because he was unaware that MDHHS already denied his application. Petitioner testified he was only aware of the denial after receiving the Benefit Notice dated November 22, 2019, sometime in late December 2019.

MDHHS contended that Petitioner's disability certificate was submitted after Petitioner's application was denied, and therefore, cannot be considered. MDHHS further contended that Petitioner's application was processed in accordance with the

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<sup>2</sup> A TLFA 8-18 is not known to be referenced within any MDHHS policy.

administrative hearing order dated November 21, 2019. MDHHS' contentions are hampered by multiple procedural errors and oddities.

When an administrative hearing decision requires a case action different from the one originally proposed, a DHS-1843, Administrative Hearing Order Certification, is sent with the hearing decision. BAM 600 (July 2019) p. 44. MDHHS is to complete the necessary case actions within 10 calendar days of the mailing date noted on the hearing decision. *Id.*

An administrative hearing decision dated November 21, 2019, ordered MDHHS to reinstate Petitioner's application and to send Petitioner a checklist which "clearly instructs" Petitioner on the verification needed to establish TLFA deferral. Exhibit A, pp. 19-21. MDHHS testimony acknowledged that Petitioner's application dated August 30, 2019, was never registered/reinstated within its database, Bridges. MDHHS may have processed Petitioner's application as if it were registered, however, it was not. By not registering Petitioner's application, MDHHS processed Petitioner's application outside of its safeguards and policy-programmed database. For example, upon denying Petitioner's application, MDHHS did not issue a denial notice through the automation of Bridges. When Bridges mails notices to clients, the mailing is prepared by automation, logged, and verifiable through Bridges. Such mailings are highly reliable and eliminate human error. In the present case, an MDHHS specialist manually completed the denial notice, and prepared it for mailing himself/herself. As a result, MDHHS could give testimony that Petitioner's denial notice was properly mailed, however, the testimony was not as reliable as the highly reliable mailing procedure through Bridges. Given the evidence, it is uncertain that MDHHS properly mailed Petitioner a denial notice for his application.

Also problematic is that MDHHS prematurely mailed Petitioner a checklist requesting proof of Petitioner's disability. MDHHS mailed Petitioner the checklist on the date of hearing, presumably, under an expectation that it would be ordered to request proof of Petitioner's disability. MDHHS should have waited until ordered by the administrative judge who conducted the hearing. By mailing Petitioner a checklist before the administrative order, MDHHS did not technically comply with the administrative order requiring a mailing within 10 days after the order. The checklist mailing date is relevant because, taking Petitioner at his word, Petitioner needed the extra days to obtain documentation of his disability from his PCP, rather than from the doctor treating him for knee problems.

Further, even if MDHHS mailed Petitioner a denial notice on November 22, 2019, that too was premature. The Medical Determination Verification Checklist sent to Petitioner gave Petitioner until November 25, 2019 to return verification. Though Petitioner returned a Medical Needs form to MDHHS on November 22, 2019, Petitioner could have had submitted additional documents from his PCP or other physicians before his checklist due date. MDHHS' premature denial resulted in allowing Petitioner less than 7 days to return proof of his disability.

Given the evidence, MDHHS did not comply with the administrative order dated November 21, 2019. Petitioner's remedy is for MDHHS to again register and again process Petitioner's FAP application dated August 30, 2019.

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to comply with an administrative order dated November 21, 2019. MDHHS is ordered to commence the following actions within 10 days of the date of mailing of this decision:

- (1) Register Petitioner's FAP application dated August 30, 2019, on Bridges; and
- (2) Initiate processing of Petitioner's application in accordance with policy, with particular emphasis on verifying Petitioner's claim of deferral from TLFA requirements due to disability.

The actions taken by MDHHS are **REVERSED**.

CG/cg



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**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-Wayne-49-Hearings  
M. Holden  
D. Sweeney  
D. Smith  
EQAD  
BSC4- Hearing Decisions

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

