



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]

Date Mailed: April 26, 2019
MOAHR Docket No.: 19-002709
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 April 23, 2019, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Corlette Brown, Hearing Facilitator, and India Hopkins, Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case due to having three countable time-limited food assistance (TLFA) months?

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 recipient of FAP benefits and was the sole member of her FAP group living in [REDACTED] County.
2. Effective October 1, 2018, the TLFA policy requiring individuals to satisfy specific work requirements in order to receive FAP benefits was applied to all counties.
3. On October 3, 2018, Petitioner submitted to the Department a signed FAP Work Requirement Review in which she checked "I am physically or mentally unable to work 20 hours per week" (Exhibit 4).

4. The Department acknowledged receiving a DHS-49, medical examination report, in October 2018 signed by Petitioner's doctor that stated that Petitioner's condition was deteriorating and she had limitations that were expected to last more than 90 days (Exhibit 11).
5. On January 30, 2019, the Department sent Petitioner a Notice of Time Limited Food Assistance Countable Month/Out of State Countable Month notifying her that for the third month she had not met the hourly participation requirement or received an out-of-state- countable month for TLFA (Exhibit 3).
6. On February 27, 2019, the Department sent Petitioner a Notice of Case Action notifying her that her FAP case was closing effective March 1, 2019 because she had used all three of her countable months for TLFA and had not become eligible for additional months by participating for 80 hours per month in employment, community service, or Michigan Works! activities (Exhibit 14).
7. On ██████████ 2019, Petitioner reapplied for FAP benefits.
8. In the interview in connection with the application, Petitioner indicated that she was disabled (Exhibit 7).
9. On March 5, 2019, the Department sent Petitioner a Notice of Case Action notifying her that her application was denied because she did not meet the requirements of working 20 or more hours per week at the minimum wage per hour (Exhibit 10)).
10. On March 13, 2019, the Department received a Medical Examination Report signed by Petitioner's doctor stating that Petitioner's condition was deteriorating and that she had physical limitations expected to last more than 90 days (Exhibit 8).
11. On ██████████ 2019, the Department received Petitioner's hearing request. Although she checked off "FIP" as the program at issue, Petitioner wrote in "I am not able to work, also I sent in paperwork."

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).

Although Petitioner marked "FIP" (Family Independence Program) as the program for which she requested a hearing, at the hearing, the Department explained that Petitioner

was not a FIP recipient and it was aware, based on ongoing conversations with Petitioner, that the program at issue was FAP, specifically concerning her failure to satisfy work requirements for FAP eligibility. Petitioner confirmed that she had requested a hearing to contest the closure of her FAP case. The hearing proceeded to address Petitioner's FAP case.

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.

The Department notified Petitioner that her FAP case was closing because she had used three countable TLFA months. Effective October 1, 2018, all counties became subject to TLFA policy for both applicants and active cases. BEM 620 (January 2019), p. 1. The policy requires an individual who is not deferred meet specific TLFA work requirements as a condition of receiving FAP benefits. BEM 620, pp. 1, 4. Failure to do so limits the TLFA individual's eligibility to receive FAP benefits to three months within a 36-month standardized period running from January 1, 2017 to December 31, 2019. BEM 620, p. 1. A non-deferred person who does not meet the TLFA work requirements without good cause for three countable months in one 36-month period is a disqualified member of the FAP group and must meet the TLFA work requirement for a 30-day period to reestablish FAP eligibility. BEM 620, p. 19.

All FAP recipients and applicants age 18-49 are TLFA unless deferred. BEM 620, p. 2. An individual is deferred from TLFA policy if he or she is determined to be medically certified as physically or mentally unfit for employment (i) through participation in a Michigan Rehabilitation Services program, (ii) as determined by a Department worker to be obviously mentally or physically unfit for employment, or (iii) if he or she satisfies the BEM 230B provisions for deferral from employment-related activities. BEM 620, p. 2. Under BEM 230B (January 2018), p. 4, a deferral from employment-related activities for FAP clients is available when a person is incapacitated due to physical or mental illness. The Department must verify the disability only if it is not obvious and the information provided is questionable (unclear, inconsistent or incomplete). See also BEM 230B, p. 4. BEM 620, p. 21 provides that a medical deferral may be verified through a statement from a nurse, nurse practitioner, designated representative at a doctor's office, social worker, or other medical personnel and, if the impairment is not obvious, by a DHS-54A, medical needs, or an MD/DO statement. Sources under BEM 230B to verify questionable information include (i) a statement from an M.D./D.O./ P.A that the person is unable to work or (ii) the DHS-54A, Medical Needs; DHS-49, Medical Examination Report; DHS-49-D, Psychiatric/Psychological Examination Report; or another written statement. BEM 230B, p. 5.

Here, in October 2018, Petitioner's doctor submitted to the Department a partially completed DHS-49 that indicated that Petitioner's physical condition was deteriorating and that she had physical limitations that were expected to last more than 90 days (Exhibit 11). The Department contended that the document was insufficient because it did not state that Petitioner could not work. However, there was no question on the DHS-49 form requiring the doctor to provide a statement concerning Petitioner's ability to work. At the hearing, the Department clarified that the DHS-54A subsequently completed by Petitioner's doctor and provided to the Department on April 22, 2019 that indicated that Petitioner was unable to work at her usual occupation or at any job and that these restrictions would last a lifetime was sufficient to establish a deferral from the TFLA work requirements. However, the case notes show that the Department provided only the DHS-49 to Petitioner when she requested a form for her doctor to complete to establish her deferral (Exhibit 2). The case comments also show, consistent with Petitioner's testimony, that Petitioner was not advised until March 5, 2019, after her case closure, that the medical forms submitted in October 2018 were insufficient. Under the circumstances presented, the Department failed to act in accordance with Department policy when it processed Petitioner's disability deferral request. Consequently, the Department improperly closed Petitioner's FAP case for having exhausted her three TLFA countable months.

It is further noted that the TLFA policy in ██████ County was to be implemented based on an individual's FAP redetermination. Because Petitioner's FAP redetermination was in September 2018 (Exhibit 2), she should have continued to receive FAP benefits without the TLFA work requirement until her next redetermination in 2019. See BEM 620, p. 1.

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 case for having three countable TFLA months.

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. Reinstate Petitioner's FAP case effective March 1, 2019;
2. Remove the three countable TLFA months from Petitioner's FAP record;

3. Issue benefits to Petitioner for FAP benefits she was eligible to receive but did not from March 1, 2019 ongoing; and
4. Notify Petitioner in writing of its decision.



AE/tm

Alice C. Elkin

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 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

LaClair Winbush
17455 Grand River
Detroit, MI
48227

Petitioner

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

cc: FAP: M. Holden; D. Sweeney
AP Specialist-Wayne County