



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]

Date Mailed: December 27, 2019  
MOAHR Docket No.: 19-012511  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun**

### **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 December 19, 2019, from Detroit, Michigan. Petitioner appeared for the hearing and represented himself. The Department of Health and Human Services (Department) was represented by Dia Gilbert, Assistance Payments Worker.

### **ISSUE**

Did the Department properly process Petitioner's Medical Assistance (MA) benefits?

Did the Department properly process Petitioner's Food Assistance Program (FAP) benefits and determine that he had used two Time Limited Food Assistance (TLFA) countable 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. On [REDACTED], 2019, Petitioner submitted an application for MA benefits. (Exhibit C)
2. On May 22, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice informing him that from April 1, 2019 ongoing, his MA application was denied, and he was ineligible for MA coverage as his income was in excess of the income limit. (Exhibit A)

3. On [REDACTED], 2019, Petitioner submitted an application for FAP benefits and a second application for MA benefits. (Exhibit C)
4. On June 18, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice advising him that for the period of June 1, 2019 ongoing, he was approved for full coverage MA. (Exhibit A)
5. The Department did not send Petitioner any subsequent notices regarding his MA eligibility.
6. On an unverified date, Petitioner was approved to receive FAP benefits. Petitioner was the only member of his FAP group and is considered a TLFA individual living in Wayne County and subject to the work requirements policy.
7. On November 14, 2019, the Department sent Petitioner a Time Limited Food Assistance Third Countable Month/Out of State Countable Month Notice (TLFA Notice) informing him that effective November 1, 2019, he had used the two of his three TLFA countable months and that a failure to meet the TLFA participation requirements in the month of November 2019 would result in the closure of his FAP case. (Exhibit D, pp. 6-7)
8. The TLFA Notice provided Petitioner with instructions on how to maintain his TLFA and how to meet the participation requirements.
9. On or around November 18, 2019, Petitioner contacted his caseworker with the Department to inform her that he submitted some documentation and that he was unable to work due to a lack of transportation. Petitioner was informed that the Department had not received any of the documentation he allegedly submitted and that he should follow up on November 22, 2019 to inquire as to whether the documents had been received and scanned into the system.
10. The Department caseworker contacted Petitioner on November 22, 2019 and informed him that no documents had been received and further informed Petitioner of the participation requirements for the month of December 2019.
11. On or around November 20, 2019, Petitioner requested a hearing disputing the Department's actions with respect to his MA and FAP cases.
12. At the time of the November 14, 2019 TLFA Notice and Petitioner's November 20, 2019, request for hearing, there had been no negative action taken on Petitioner's FAP case, as his benefits were still active.

## **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).

### **MA**

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

In this case, it was initially unclear based on Petitioner's written hearing request what negative action taken by the Department with respect to his MA case he requested a hearing to dispute. After some discussion and inquiry, it was established that Petitioner had applied for MA benefits in [REDACTED] 2019 and in response the Department issued a Health Care Coverage Determination Notice on May 22, 2019, denying his application due to excess income. There was no evidence that Petitioner filed a request for hearing to dispute the denial of the application. Because Petitioner's November 20, 2019 request for hearing was filed more than 90 days after the written denial notice, it is considered untimely and will not be addressed with this Hearing Decision. See BAM 600.

Petitioner submitted a second application for MA benefits in [REDACTED] 2019 that was approved by the Department as noted in the June 18, 2019, Health Care Coverage Determination Notice (Notice). Petitioner asserted that his medical providers were unable to bill for months in which he was either hospitalized or received medical treatment. Petitioner could not identify the months at issue and was unable to clearly articulate which months his providers were unable to bill, whether they were months in which he had approved MA coverage or whether he did not have active MA coverage for those months. Petitioner made reference to dates of service in [REDACTED] 2019, as well as an application that was submitted in pending status but did not provide any documentation in support of his testimony. The Department presented the June 18, 2019 Notice and testified that Petitioner had been approved for MA coverage since that time with no lapse in his coverage. The Department also presented an Eligibility Summary in support of its testimony which shows that Petitioner's MA case was approved and active under the Healthy Michigan Plan (HMP) since that time. (Exhibit B). A review of the Department's correspondence history through Bridges showed that there were no subsequent negative action or eligibility notices sent to Petitioner after June 2019. Therefore, based on the documentary evidence and the testimony

presented at the hearing, Petitioner has failed to establish that the Department had taken a negative action with respect to his MA case in the 90 days prior to his request for hearing. Thus, it was established that the Department had properly processed Petitioner's [REDACTED] 2019 MA application and approved him for full coverage MA under the HMP category.

### **FAP**

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 requested a hearing on November 20, 2019 disputing the Department's actions with respect to his FAP benefits. Effective January 1, 2017, a TLFA individual must meet specific TLFA work requirements as a condition of receiving FAP benefits. Failure to do so limits the TLFA individual's eligibility to receive FAP benefits to three months within a 36-month period, January 1, 2017 to December 31, 2019. All FAP individuals age 18-49 are TLFA unless deferred. BEM 620 (November 2019), pp. 1-2.

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 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 minimum wage. BEM 620, pp. 1-4.

This requirement exists unless the individual (i) is deferred (there is a FAP group member under age 18; the individual is deferred from employment-related activities per BEM 230B; the individual is pregnant; the individual is medical certified as physically or mentally unfit for employment as defined in policy) or (ii) can establish good cause for failing to meet TLFA Work Requirement (i.e., illness, death of household member, no transportation, lack of work, household emergency, temporarily unfit for work). The Department will verify good cause only if the claim is considered questionable. BEM 620, pp. 1-6. The Department will verify a medical deferral for physical or mental impairment through a statement from a nurse, nurse practitioner, designated representative at a doctor's office, or other medical personnel. If the impairment is not obvious, a MDHHS-54A, Medical Needs or an MD/DO statement may be used. BEM 620, pp. 20-21.

TLFA individuals who meet all other FAP eligibility requirements are eligible for only three countable months during the 36-month period from January 1, 2017 to December 31, 2019 and the 36-month period from January 1, 2020 to December 31, 2022. BEM 620, p. 1. A countable month is one in which the individual who is not deferred from TLFA requirements does not meet the TLFA deferral or work requirement and does not have good cause for failing to meet the requirement. A person's countable months from another state which were received as a TLFA individual are countable in Michigan as well. BEM 620, pp. 5-6. The Department will issue a MDHHS-142 Time Limited Food Assistance Notice to each individual who becomes subject to the TLFA requirements. BEM 620, p. 10-11.

A person who does not meet the TLFA work requirements without good cause is a disqualified member of the FAP group and a person who has three countable months in one 36-month period must meet the TLFA work requirement for a 30 day period in order to reestablish FAP eligibility. The Department will determine when the countable months are exhausted and on the 17<sup>th</sup> of the third countable month, will generate the DHS-142A, TLFA Third Countable Month/Out of State Countable Month notice to inform the client that unless they meet the work requirement for the third countable month, the case will close or the individual will be disqualified from the group. If all countable months are exhausted, the Department will generate a MDHHS-1605 Client Notification with timely notice to close the case or disqualify/remove the TLFA member. BEM 620, pp.17-19. A timely notice is mailed at least 11 days before the intended negative action takes effect. BAM 220 (October 2018), at pp. 4-5.

At the hearing, it was established that on November 14, 2019, the Department sent Petitioner a Time Limited Food Assistance Third Countable Month/Out of State Countable Month Notice (TLFA Notice) informing him that effective November 1, 2019, he had used the two of his three TLFA countable months and that a failure to meet the TLFA participation requirements in the month of November 2019 would result in the closure of his FAP case. (Exhibit D, pp. 6-7). As of the hearing request date, the Department had not yet determined that Petitioner had used three countable months or that his FAP case would close as a result. While there was some testimony that on or around November 30, 2019 the Department may have possibly issued a Client Notification, timely notifying Petitioner of the closure of his FAP case, this notice was not presented for review and would be considered a subsequent negative action that the undersigned Administrative Law Judge does not have the authority to address. Additionally, although there was some discussion on the record concerning Petitioner's lack of transportation, his two countable months and whether they were properly counted, because there was no termination of benefits, negative action or client notification issued to Petitioner prior to the request for hearing date, the Petitioner has failed to establish that he is entitled to request a hearing to dispute the Department's finding that he had two countable TLFA months. See BAM 600. The appropriate time for Petitioner to request a hearing would be after receiving a notice of case closure, Client Notification or other eligibility notice informing him of the closure of his FAP case due to having used three countable TLFA months. As such, because there was no negative

action taken by the Department with respect to Petitioner's FAP benefits prior to his November 20, 2019 hearing request, the hearing request as it relates to the FAP is **DISMISSED**.

**DECISION AND ORDER**

Accordingly, the Department's MA decision is **AFFIRMED** and Petitioner's hearing request with respect to the FAP is **DISMISSED**.



ZB/tm

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**Zainab A. Baydoun**

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.

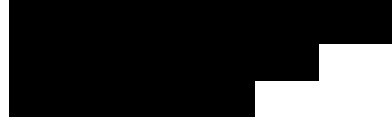
If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

**DHHS**

Denise McCoggle  
27260 Plymouth Rd  
Redford, MI 48239

**Petitioner**



cc: FAP: M. Holden; D. Sweeney  
MA- Deanna Smith; EQADHShearings  
AP Specialist-Wayne County