



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: June 18, 2020
MOAHR Docket No.: 20-002899
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 June 15, 2020, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Olivette Gordon, Family Independence Manager and Sharine Gillis-Baytops, Eligibility Specialist.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) eligibility?

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 FAP recipient.
2. Petitioner's household consisted of herself and her three adult children.
3. On March 30, 2020, the Department sent Petitioner a Notice of Case Action informing her that she was approved for FAP benefits for a group size of one effective March 1, 2020, ongoing.
4. Petitioner submitted a request for hearing disputing the Department's actions.

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 was an ongoing FAP recipient. The Department testified that effective March 1, 2020, Petitioner's FAP benefits were based on a group size of one. The Department stated that Petitioner had adult children living in her household. However, the adult children were determined to be ineligible as they were in student status, and they did not meet the Time Limited Food Assistance (TLFA) work requirements.

Effective October 1, 2018, clients must meet specific TLFA work requirements as a condition of FAP eligibility. BEM 620 (November 2019), 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 \$8.90 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 \$8.90 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; (ii) deferred from employment-related activities per BEM 230B; (iii) in any stage of pregnancy; or (iv) determined to be medically certified as physically or mentally unfit for employment. BEM 620, pp. 1-2. A person enrolled in a post-secondary education program may be in student status as defined by BEM 245, and eligible for a deferral. BEM 230B (January 2018), pp. 4-5.

A person is in student status if she is: age 18 through 49 and enrolled half-time or more in a: vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate, or a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245 (January 2020), p. 3-4. In order for a person in student status to be eligible, they must meet one of the following criteria: (i) receiving FIP; (ii) enrolled in an institution of higher education as a result of participation in a Job Training Partnership Act (JTPA), a program under the Trade Readjustment Act or another state or local government employment and training program; (iii) physically or mentally unfit for employment; (iv) employed for at least an average of 20 hours per week and paid for such employment; (v) self-employed for at least an average of 20 hours per week and earning an average weekly income at least equivalent to the federal minimum wage multiplied by 20 hours; (vi) participating in a state or federally-funded work study program during the regular school year; (vii) providing more than half of the physical care of a group member under the age of six; (viii) providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate child care is not available to enable the person to attend class and work at least 20 hours per week or participate in a state or federally-financed work study program during the school year; or (ix) a single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12. BEM 245, p. 5. For the care of a child under age six, consider the student to be providing physical care as long as he or she claims primary responsibility for such care, even though another adult may be in the FAP group. BEM 245, p. 5.

At the hearing, the Department confirmed that Petitioner's children were enrolled as full-time college students. Per policy, Petitioner's children would be deferred from the TLFA work requirements. Therefore, the Department did not act in accordance with policy when it determined Petitioner's children were not eligible for FAP benefits due to their failure to meet the TLFA work requirements.

The Department also testified that Petitioner alleged that her children were working a minimum of 20 hours per week. However, the Department stated that Petitioner did not submit verification of her children's employment until March 18, 2020, and that the verifications that were submitted were inadequate.

Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130 (April 2017), p. 1. To request verification of information, the Department sends a verification checklist (VCL) which tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. For FAP cases, the Department allows the client 10 calendar days (or other time limit specified in policy) to provide the verification that is required. BAM 130 (April 2017), p. 7. The Department sends a negative action notice when: the client indicates a refusal to provide a verification OR the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130, p. 7.

The only evidence presented by the Department were notices of TLFA countable months (Exhibit A, pp. 6-11). As stated above, Petitioner's children should be deferred from the TLFA requirements. For the children to be eligible, Petitioner would need to submit verification that her children were working a minimum of 20 hours per week. The Department did not present any evidence that a VCL was sent to Petitioner requesting the verifications, nor did the Department provide the verifications that were deemed insufficient that were submitted by Petitioner on March 18, 2020. In the absence of such evidence, the Department failed to establish that it acted in accordance with policy when it determined that Petitioner's children were not eligible for FAP benefits. Therefore, the Department failed to establish that it acted in accordance with policy when it determined Petitioner's FAP eligibility.

DECISION AND ORDER

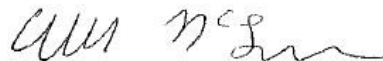
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's FAP eligibility.

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 March 1, 2020, ongoing;
2. If Petitioner is eligible for additional 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-Wayne-57-Hearings
M. Holden
D. Sweeney
BSC4- Hearing Decisions
MOAHR

Petitioner – Via First-Class Mail:

