

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No.: 2009-23339
Issue No.: 3000
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
July 20, 2009
Wayne County DHS (43)

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on July 20, 2009. The Claimant appeared and testified. [REDACTED], ES and [REDACTED], FIS appeared on behalf of the Department.

ISSUE

Whether the Claimant's hearing request regarding Food Assistance Program ("FAP") benefits was timely?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant was an active FAP recipient.
2. Claimant's FAP benefits were recalculated and reduced in January of 2009 due to the receipt of unemployment compensation.

3. The Department received Claimant's hearing request on 5/7/09. The Department indicated that this was the first request received and in the file.
4. Claimant testified that he faxed over a hearing request on 4/14/09.
5. Claimant produced a document dated 4/14/09 which contests his reduction in food stamps. (Exhibit 1). Upon review, there is not receipt of fax attached to the document.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Requests for a hearing must be made in writing and signed by the Claimant or his authorized representative. (PAM 600, p. 2). A claimant has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days. (PAM 600, p. 4). The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich. App. 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich. App. 270 (1976).

In the subject case, the Department paid benefits for the month of January based on Claimant's unemployment compensation. Even giving Claimant the benefit of the doubt and assuming that benefits were not paid until 1/31/09, Claimant's 90 days would have expired at the

end of April. Claimant did not file his hearing request until 5/7/09. Claimant testified that he filed an earlier request dated 4/14/09. Contrastingly, the Department testified that the 4/14/09 fax was never received. Lending credence to the Department's testimony, however, is the fact that there is no proof of facsimile transmission. The Administrative Law Judge finds that the 4/14/09 hearing request was never received by the Department and the 5/7/09 request is the earliest hearing request received.

The regulation indicates that the request for hearing must be received within 90 days from the date of the written notice. Accordingly, Claimant's earliest, 5/7/09, hearing request was untimely.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Claimant did not timely file a hearing request for the Department's determination to reduce FAP benefits. The Department's January FAP benefit calculation, therefore, is AFFIRMED.

/s/

Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 08/20/09

Date Mailed: 08/25/09

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

JV/jlg

cc:

