

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: 2010-13164  
Issue No: 3000  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
February 18, 2010  
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Janice G. Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, an evidentiary hearing was held on 2/18/2010. Claimant was represented at the administrative hearing by attorney

[REDACTED] of [REDACTED]

ISSUE

Is there jurisdiction to proceed with an administrative hearing where there is an untimely hearing request?

FINDINGS OF FACT

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

1. On 6/29/09 claimant applied for FAP with the Michigan DHS.
2. Claimant is not a U.S. citizen.

3. On 6/29/09 the DHS issued a denial notice for the following reason:

Not eligible. Group member (not a citizen or eligible alien).  
Notify your specialist immediately if your citizenship or  
immigration status has recently changed...  
Exhibit 1.4

4. The 6/29/09 DHS denial notice to claimant states in part:

Right to an administrative hearing: If you disagree with an action  
described in this notice or think it is incorrect, you may request a  
hearing within 90 days of the date of this notice...Exhibit 2

5. On October 20, 2009, claimant filed a hearing request in Washtenaw County  
DHS. Exhibit 2

6. Claimant argued that she filed an earlier hearing request via a fax on 7/23/09.

Claimant did not have a fax confirmation of the request.

#### 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 (DHS or department) 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).

Applicable policy and procedure to the case herein states in part:

The AHR, or if none, the client has 90 calendar days from the date of the written notice of case action to request a hearing. PAM, Item 600, p. 4.

A claimant shall be provided 90 days from the mailing of the notice in R 400.902 to request a hearing. R 400.904(4).

**Time period for requesting hearing.** A household shall be allowed to request a hearing on any action by the State department or loss of benefits which occurred in the prior 90 days. Action by the State department shall include a denial of a request for restoration of any benefits lost more than 90 days but less than a year prior to the request. In addition, at any time within a certification period a household may request a fair hearing to dispute its current level of benefits. 7 CFR 273.15(g).

Unrefuted evidence on the record is that the denial notice was dated 6/29/09, and that Washtenaw County DHS received a hearing request on 10/20/09. However, claimant argues that she filed an earlier request for a hearing – on 7/23/09. In support of her argument, claimant submitted a coversheet from [REDACTED] of the purported facts. However, claimant did not have or submit a fax confirmation.

The undersigned Administrative Law Judge has reviewed the evidence in this case and does not find that a coversheet meets the burden of proof of showing that a hearing request was faxed without a fax confirmation. This ALJ will not find sufficient verification to shift the burden to the department. The earliest date that there is evidence of a hearing request is the 10/20/09 date stamped request submitted by the department. Thus, as the above cited hearing authority requires a hearing request to be filed within the 90 day window, and because claimant's hearing request is well beyond the 90 day window, there is no jurisdiction to make a substantive review.

It is noted in the alternative that the department submitted emails between counsel and the local office regarding this hearing request. The earliest email is dated 9/30/09. In the alternative, as a FAP hearing request may be done verbally, 9/30/09 is also beyond the 90 day window from the 6/29/09 hearing request. Thus, the alternative, the verbal/email request is also outside the jurisdictional window.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides there is no jurisdiction to proceed where a hearing was filed outside the 90 day jurisdictional window under the FAP program, and, accordingly, claimant's hearing request is dismissed.

/s/  
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Janice G. Spodarek  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: February 26, 2010

Date Mailed: March 1, 2010

**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.

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.

JS/lk

cc:

