

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: 2010-16623
Issue No: 3008
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
April 14, 2010
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

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 in-person hearing was held on April 14, 2010. Claimant personally appeared and testified.

ISSUE

Did the department properly close claimant's Food Assistance Program (FAP) case for failure to timely complete the mandatory redetermination process?

FINDINGS OF FACT

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

(1) At all times relevant, claimant was an ongoing FAP recipient who was required to undergo mandatory benefit redeterminations at periodic intervals to determine whether or not she still met all of the eligibility criteria necessary to remain FAP eligible.

(2) At all times relevant, claimant's address-of-record was (and remains) [REDACTED]

(3) On November 16, 2009, the department mailed a Redetermination form (DHS-1010) to claimant's address-of-record which explained she must complete the required information and return all the requested proofs to her local office no later than December 1, 2009 (Department Exhibit #1, pgs 1-6).

(4) This form also clearly states:

If you do **NOT** return this form and all of the required proofs by the due date, your benefits may be cancelled or reduced (Department Exhibit #1, pg 1).

(5) The department did not receive any of the required proofs by the stated deadline; however, nearly one month after it passed, specifically on December 28, 2009, claimant telephoned the local office to discuss her FAP case.

(6) At that time, the local office informed claimant her FAP benefits must end at the end of December 2009 unless she could complete and return the Redetermination form (DHS-1010) before the last day of the month; additionally, because that was only three days away, the local office suggested claimant complete an entirely new FAP application instead.

(7) On December 28, 2009, the local office also mailed claimant a second Redetermination form (DHS-1010) at her request so she could attempt to complete and return it by the end of the month, if she so chose.

(8) When claimant failed to meet the December 31, 2009 deadline, her FAP case closed as warned; consequently, she requested a hearing to protest the closure.

(9) Additionally, the day after claimant's case closed, specifically on January 1, 2010, the local office received by fax a completed Redetermination form (DHS-1010) with a typewritten addendum attached (Department Exhibit #1, pgs 2-6).

(10) Claimant's hearing was held on April 14, 2010.

(11) Because claimant had been without FAP benefits for four months, the presiding Administrative Law Judge suggested she reapply for FAP while her appeal was pending.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The applicable departmental policy states:

CLIENT OR AUTHORIZED REPRESENTATIVE RESPONSIBILITIES

Responsibility to Cooperate

All Programs

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of the necessary forms. BAM, Item 105, p. 5.

All Programs

Clients must completely and truthfully answer all questions on forms and in interviews. BAM, Item 105, p. 5.

Verification is usually required at application/redetermination **and** for a reported change affecting eligibility or benefit level. BAM, Item 130, p. 1.

At application and redetermination:

- . Thoroughly review all eligibility factors in the case.

Applications and redeterminations must be completed within the standards of promptness. See BAM 115, 210. BAM, Item 105, p. 11.

FAP Only

Benefits stop at the end of the benefit period **unless** a redetermination is completed **and** a new benefit period is certified. If the client does not complete the redetermination process, allow the benefit period to expire. The redetermination process begins when the client files a DHS-1171, Assistance Application, DHS-1010, Redetermination, DHS-1171, Filing Form, or DHS-2063B, Food Assistance Benefits Redetermination Filing Record. BAM, Item 210, pg 2.

The credible evidence of record establishes the department followed the above-referenced policy to the letter in this case, both by keeping claimant fully advised via written communications to her address-of-record and by allowing her FAP case to close at the end of the former FAP certification period.

At hearing, claimant alleged her mail frequently gets misdirected and she never received the first Redetermination form (DHS-1010) the local office sent her. The local office's witness testified credibly none of the transmittals they mailed to claimant during her redetermination period were ever returned as undeliverable.

Michigan's case law is well-settled in this area. It provides that the proper mailing and addressing of a letter creates a presumption of receipt. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

While this presumption is rebuttable, claimant provided absolutely no documentary evidence or substantiating testimony to corroborate her version of non-receipt.

Additionally, claimant argued the department's actions constitute a Constitutional "Deprivation of Rights under Color of Law." This position must fail because it simply is not within the scope of authority delegated to Administrative Law Judges under well-settled Michigan law which provides that an administrative adjudicator does not have authority to decide Constitutional issues. *Dation v Ford Motor Co*, 314 Mich 152 (1946); *Flanigan v Reo Motors, Inc*, 300 Mich 359 (1942); *Mackin v Detroit Timken Axle Co*, 187 Mich 8 (1915).

Likewise, the Department of Human Services Director issued a written directive consistent with Michigan law which states:

Administrative law judges have no authority to make decisions on Constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Lastly, claimant alleges that, during the December 28, 2009 telephone conference, the caseworker told claimant her FAP case would not close as long as she turned-in the required documentation by January 1, 2010. Claimant's caseworker testified she did not state anything of the sort. Considering the totality of the circumstances in light of the evidence presented and in light of the fact that this particular caseworker is a seasoned employee who has properly processed hundreds of FAP redeterminations during her three year tenure in the job, this Administrative Law Judge finds the department's testimony more credible than claimant's testimony. As such, no basis exists in fact, law or policy to reverse the department's FAP closure action.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department properly closed claimant's FAP case for failure to timely complete the mandatory redetermination process.

Accordingly, the department's action is **AFFIRMED**.

/s/

Marlene B. Magyar
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 2, 2010

Date Mailed: June 3, 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.

MBM/db

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