

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 201146857
Issue No.: 3002
Case No.: [REDACTED]
Hearing Date: September 8, 2011
Wayne County DHS (15)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 a hearing. After due notice, a telephone hearing was held on September 8, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, and [REDACTED], Manager, appeared and testified.

ISSUES

1. One issue is whether Claimant timely requested an administrative hearing concerning an unspecified failure by DHS to issue FAP benefits for 8/2009.
2. If Claimant timely requested a hearing, a second issue is whether Claimant is entitled to any supplement of FAP benefits for 8/2009.

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 ongoing FAP benefit recipient.
2. In 7/2009, Claimant stopped receiving FAP benefits.
3. On 9/3/09, Claimant reapplied for FAP benefits and was approved.
4. On 11/24/09, Claimant requested a hearing to dispute the failure by DHS to issue FAP benefits for 8/2009.

5. DHS did not receive Claimant's hearing request until 2/19/10.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp 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). DHS administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

The undersigned will refer to the DHS regulations in effect as of 8/2009, the estimated month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

Claimant requested an administrative hearing to dispute some unspecified failure by DHS to issue her FAP benefits in 8/2009. The issue is simple enough, however, there are many problems in resolving the issue.

First, two years have passed since the FAP benefit month in dispute. Claimant and DHS were unable to testify concerning many important details because of the time lapse.

Secondly, DHS was unable to obtain any supporting documentation concerning Claimant's dispute. Ideally, DHS would have specified what events occurred and provided documentation verifying and justifying the events. In the present case, DHS could not even state whether Claimant received FAP benefits in 8/2009.

As a result of these problems, little evidence was presented for a decision to be made. It is known that there was some dispute concerning the timeliness of Claimant's hearing request.

Claimant submitted two hearing request documents to DHS, a form letter referring to an unspecified case action from 11/21/09 and an attached written statement from Claimant. Both documents were signed by Claimant accompanied by an 11/24/09 handwritten date. DHS had date stamps showing a DHS office receipt date of 2/19/10.

BAM 600 contains the DHS policy for administrative hearings including the client deadline to file a hearing request. Generally, clients have 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 at 4. Concerning FAP benefits, a client may request a hearing disputing the current level of benefits at any time within the benefit period. *Id.*

It is known that DHS received an Assistance Application from Claimant on 9/3/09. It is also known that Claimant's hearing request stated "my booklet and recertification papers were submitted by mail several days before my case was to closed. I called my then worker to check to make sure that she had received my paper..." The request goes on to state "my case was closed and so I had to reapply".

A very probable scenario is that Claimant received FAP benefits through 7/2009 and then the FAP benefits stopped for an unspecified reason involving a redetermination of benefits. Claimant made attempts to contact DHS in 8/2009 concerning the termination before reapplying on 9/3/09 to restart the benefits. In such a scenario, Claimant would be attempting to dispute a case action from 7/2009. Concerning a 7/2009 case action, Claimant's hearing request would be untimely even accepting a hearing request submission date of 11/24/09.

However, the 90 day time frame to dispute a hearing is begun with written notice, not just a case action. If there was no written case action notice by DHS, Claimant's hearing request would be timely because the 90 day clock would not have started ticking. DHS was unable to establish whether any written notice was mailed to Claimant.

Also, DHS should have been able to verify that the above scenario occurred. DHS was unable to do so. Because DHS is expected to maintain case records, DHS should bear the responsibility of failing to verify case actions. Thus, it is much more tempting to fault DHS for failing to establish that Claimant's hearing request was untimely rather than presuming that it was not. Though there is a fair amount of evidence to conclude that Claimant's request was untimely, it is found that Claimant timely requested a hearing concerning a dispute of an 8/2009 FAP benefit issuance.

As stated above, DHS could not even determine if 8/2009 FAP benefits were issued to Claimant. In 8/2009, DHS changed computer systems. Any DHS records from 8/2009 apparently require special accessibility. Claimant testified on a scale of 1-10, she was a 10 as far as her certainty whether FAP benefits were issued. Based on the presented evidence, the undersigned can only conclude Claimant did not receive 8/2009 FAP benefits.

There is similarly little evidence to conclude whether the 8/2009 failure to issue benefits was proper. DHS could not explain why the benefits were not issued. Claimant was similarly uncertain. The likeliest scenario was that the benefits stopped due to some redetermination issue in 7/2009. Perhaps Claimant failed to verify information related to the redetermination causing a termination. However, DHS could not identify what the Claimant failure was. Based on the evidence, it can only be concluded that Claimant is entitled to FAP benefits for 8/2009.

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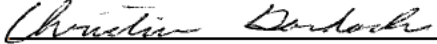
There is insufficient evidence for the undersigned to determine whether Claimant was entitled to FAP benefits for 8/2009 and if she is, for how much. DHS may or may not have the necessary documentation to make an 8/2009 FAP benefit eligibility determination. It will be left for DHS to determine whether further documents will be needed for the determination.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly terminated Claimant's FAP benefits 7/2009. It is ordered that DHS:

- (1) supplement Claimant for FAP benefits for 8/2009 based on previously received documents or initiate a request of documents concerning Claimant's FAP benefit eligibility for 8/2009; and
- (2) follow all appropriate DHS regulations in processing the supplement or document request.

The actions taken by DHS are REVERSED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: September 14, 2011

Date Mailed: September 14, 2011

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 of the rehearing decision.

CG/hw

cc:



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