

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

IN THE MATTER OF: Reg
 Issue
 Case
 Hearing

Oakland

No: 2011-30600
No: 3004
No: [REDACTED]
Date:
May 23, 2011
County DHS (02)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 May 23, 2011. The Claimant appeared and testified. [REDACTED] FIM and [REDACTED] ES, appeared on behalf of the Department.

ISSUE

Whether the Department is required to process the application mailed by the Claimant on January 21, 2011, but not received by the Department, and grant retroactive FAP benefits to the Claimant.

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 applied for food assistance on two occasions. The Claimant applied on January 22, 2011, and mailed the application to the Department using a pre addressed mailing label provided by the Department.

2. The Claimant applied for FAP again on April 22, 2011, after he was advised for the first time by the Department receptionist that the Department had no record of his first application. Claimant Exhibit 1.
3. The Claimant called the Department approximately a month after he filed the first FAP application, (February 23, 2011) and was told the application was not yet in the system. On March 25, 2011, the Claimant called the Department and was finally told there was no record of his application being received.
4. The Claimant properly addressed the envelope and mailed the application to the Department.
5. The Claimant introduced a copy of the January 22, 2011 application and a copy of the mailing label at the hearing. Claimant's Exhibits 1 and 2.
6. The Department testified that it did not receive the January 22, 2011 application.
7. The Department checked the log where all received applications are logged in and found no record of the January 22, 2011 application.
8. The Claimant requested a hearing on April 22, 2011, seeking a hearing regarding the failure of the Department to grant retroactive FAP benefits to him based on the January 22, 2011 application date.

CONCLUSIONS OF LAW

A. FAP

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

In this case, the Claimant credibly testified that he applied for food assistance on January 22, 2011, and called approximately a month later and was told the application was not yet in the system. The Claimant waited another month, around March 25, 2011, and was finally told there was no record of his application being received.

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 this case the presumption of receipt was not rebutted by the Department as the Claimant clearly established that he properly addressed the envelope using the Department's pre addressed mailing label and thereby raised the presumption that the letter to the Department was received. Additionally, the Claimant presented a copy of the original application he mailed to the Department and a copy of the mailing label further supporting his testimony that he applied and properly mailed the application. The Department had no record of the application being received and testified that the application log contained no reference to the Claimant's application being received.

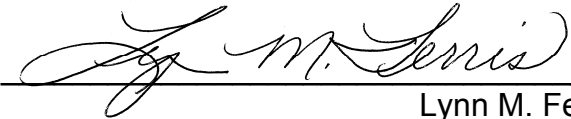
Under these facts it is found that the Claimant properly filed the application and properly addressed and mailed the application, and that the Department should have received it. The Department did not rebut the proof of mailing and receipt. The Department receives a large volume of mail and easily could have misplaced or lost the application. Therefore, it is determined that the Department is required to supplement the Claimant's FAP benefits retroactive to the January 22, 2011 application as the Claimant has established by his actions and evidence that the application was received. The Department's actions, as regards to the Claimant's January 22, 2011 application, are REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the findings of fact and conclusions of law, finds that the Department must grant a supplement to the Claimant for FAP benefits retroactive to January 22, 2011, the date of the Claimant's FAP application as it is presumed the Department received the application, and should have processed the application. The Department's decision to deny the Claimant's FAP benefits retroactive to the first application date is REVERSED.

Accordingly, it is ORDERED:

1. The Department shall process the January 22, 2011 application and shall issue a FAP supplement to the Claimant retroactive to the application date for FAP benefits the Claimant was otherwise entitled to receive.



Administrative
for
Department

Lynn M. Ferris
Law Judge
Maura Corrigan, Director
of Human Services

Date Signed: 05/26/11

Date Mailed: 05/26/11

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.

LMF/dj

CC:

[REDACTED]