

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201262276
Issue No.: 3002
Case No.: [REDACTED]
Hearing Date: July 30, 2012
County: Wayne DHS (49)

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 following Claimant's request for a hearing. After due notice, a telephone hearing was held on July 30, 2012 from Detroit, Michigan. Participants included the above named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly determined Claimant's Food Assistance Program (FAP) benefit eligibility.

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. As of 1/2012, Claimant paid a monthly obligation for child support.
3. As of 1/2012, Claimant had no rent obligation but on an unspecified subsequent date he became responsible for a \$200/month rent obligation.
4. Claimant failed to report the rent obligation to DHS.
5. On 1/2012, DHS updated Claimant's FAP benefit eligibility based, in part, on factoring a \$0/month obligation for rent and child support.

6. On 6/26/12, Claimant requested a hearing to dispute his FAP benefit eligibility since 1/2012.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

For all programs, the client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 at 4. The request must be received anywhere in DHS within the 90 days. *Id.* For FAP only, the client or authorized hearing representative may request a hearing disputing the current level of benefits at any time within the benefit period. *Id.*

In the present case, Claimant requested a hearing on 6/26/12 to dispute his FAP benefit eligibility since 1/2012. It was not established when DHS mailed Claimant a notice of his FAP benefit eligibility for 1/2012, but there is little doubt that the written notice was sent more than 90 days prior to the Claimant submitted a hearing request. However, because Claimant requested a hearing concerning his current level of FAP benefit eligibility, Claimant's hearing request is timely per DHS regulations. What is less certain is whether Claimant is entitled to a review of his FAP benefit eligibility from 1/2012 (the first month affected by the most recent action by DHS), or 6/2012 (the month represented by Claimant's current FAP benefits at the time his hearing request was made).

Generally, when there is a need for clarification of policy, the policy should be interpreted unfavorably for the party making the policy. DHS has the authority to draft its own guidelines. When those guidelines are unclear, it is the fault of only DHS, the drafter of those guidelines. If any party should bear the burden of consequence, that party is DHS, not Claimant. This general rule is supportive in giving Claimant the most beneficial interpretation of vaguely written DHS regulations. Accordingly, it is found that Claimant is entitled to dispute his FAP benefit eligibility from 1/2012.

Claimant specifically raised two issues concerning his FAP benefit eligibility. Claimant contended that DHS incorrectly factored his child support and rent obligations.

For all programs, clients must report changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 at 7. The reporting obligation is also found on several DHS documents, including the Assistance Application. It is also common sense

that DHS cannot factor a client's expense into a benefit decision unless the client informs DHS of the change.

Concerning Claimant's rent obligation, Claimant stated that he paid \$0/month in rent until a couple of months ago. Claimant stated he then became responsible for a \$200/month rental obligation. Claimant conceded that he did not report the obligation to DHS until the date of the administrative hearing. DHS cannot be faulted for failing to factor what they could not know without Claimant's reporting. It is found that DHS properly did not factor a rental obligation in Claimant's FAP benefit eligibility because Claimant did not report the change to DHS.

The same finding does not necessarily apply to the issue whether DHS properly failed to factor Claimant's child support obligation in the FAP benefit determination. The significant difference between a rent and child support obligation is that DHS specialists have access to a client's child support obligations through their database.

To complete the redetermination process, DHS specialists are to check all available automated systems matches to see if income has started, stopped or changed, such as consolidated inquiry, SOLQ, etc. BAM 210 at 12. DHS automated systems include access to child support payments. It was not disputed that DHS had knowledge that Claimant was paying \$177.50/month in child support as of 1/2012. DHS noted that Claimant's payments were for a child support arrearage and suggested that arrearage payments are not budgetable. Child support arrearage payments are an allowable FAP benefit expense. BEM 554 at 4. Because DHS had knowledge of Claimant's child support payments and failed to budget the expense, it is found that DHS erred in determining Claimant's FAP benefit eligibility. As noted above, Claimant's FAP benefit eligibility should be reconsidered beginning 1/2012.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly budgeted Claimant's rent as \$0/month concerning FAP benefit eligibility since 1/2012. The actions taken by DHS are PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly determined Claimant's FAP benefit eligibility since 1/2012 concerning child support payments. It is ordered that DHS:

- (1) recalculate Claimant's FAP benefit eligibility beginning 1/2012 based on Claimant's child support payments as verified by their automated system; and
- (2) supplement Claimant for any FAP benefits not received as a result of the failure to originally factor Claimant's child support payments.

The actions taken by DHS are PARTIALLY REVERSED.



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

Date Signed: August 1, 2012

Date Mailed: August 1, 2012

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases).

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail to:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

