

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

IN THE MATTER OF:



Reg. No.: 201268799
Issue No.: 3022
Case No.: [REDACTED]
Hearing Date: October 18, 2012
County: Washtenaw DHS (20)

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, an in-person hearing was held on October 18, 2012 from Ypsilanti, Michigan. Participants included the above named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED] Supervisor, and [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly terminated Claimant's eligibility for Food Assistance Program (FAP) due to an alleged Claimant failure to return redetermination documents.

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. Claimant's FAP benefit period was scheduled to end 5/31/12.
3. On 4/16/12, DHS mailed Claimant a Redetermination.
4. Claimant failed to return the Redetermination or any other verification documents.
5. On 5/1/12, DHS mailed Claimant a Notice of Missed Interview informing Claimant of a potential FAP benefit termination to be effective 6/2012.
6. On 8/2/12, Claimant requested a hearing to dispute the termination of FAP benefits.

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

The present case concerns a termination of FAP benefits. Prior to an evaluation of the correctness of the termination, a procedural issue concerning the timeliness of Claimant's hearing request must be addressed.

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 (4/2012), p. 3. The request must be received anywhere in DHS within the 90 days. *Id.*

DHS noted that the last written notice to Claimant was a Notice of Missed Interview form dated 5/1/12. Claimant's hearing request was submitted to DHS on 8/2/12. If 5/1/12 is recognized as the date of the written notice of case action, then Claimant's hearing request would be untimely as the hearing request was submitted to DHS on the 93rd day after the notice.

DHS does not specifically define what is a "written notice of case action". DHS policy gives guidance elsewhere in their regulations.

Upon certification of eligibility results, Bridges (the DHS database) automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 220 (5/2012), p. 2. The notice of case action is printed and mailed centrally from the consolidated print center. *Id.* DHS does not send a notice of case action when the FAP benefit expires. *Id.*, p. 4. That is the very circumstance of the present case.

As noted above, DHS contended that the date that DHS mailed a Notice of Missed Interview should serve as a written notice of case action date because it was the last written notice sent to claimant. The DHS contention requires interpreting "written notice of case action" to mean any DHS form that informs a client of a case action. The DHS contention has some problems.

First, BAM 600 specifically refers to a "notice of case action"; that is the precise title of the form that DHS mails in most circumstances when benefits are affected. "Notice of case action" is not likely to refer to a generic written notice when there happens to be a form with that very specific title. Also, DHS policy concedes that a notice of case action is not mailed when a FAP benefit period expires. Thus, it is highly unlikely that DHS

regulations intended to allow other forms to serve as a written notice in lieu of the Notice of Case Action.

It is also worth noting, that accepting the DHS contention would limit Claimant's timeframe in requesting a hearing to 60 days after her benefit period expired. For other programs, DHS sends a Notice of Case Action approximately 12 days prior to the end of a benefit period (see BEM 220 (4/2012), p. 9). It would be odd that DHS intended to reduce the timeframe for requesting a hearing after the expiration of a FAP benefit period by 18 days.

Because DHS regulations do not limit a client's timeliness for the various times DHS does not require that a Notice of Case Action be mailed, a client could theoretically timely request a hearing several years after a benefit closure. A reasonable limit on clients would be to impose a constructive notice limit on the time a client has to request a hearing. In the circumstances of the present case, a client would be constructively given notice of a FAP benefit stoppage on the first date that FAP benefits were expected to be issued, but weren't. Applied to the present case, Claimant would have been constructively notified of a FAP benefit termination on whichever date in 6/2012 that FAP benefits would have been issued had Claimant's FAP benefit eligibility been redetermined. Using any date in 6/2012 to serve as the constructive notice date would result in a timely hearing request for Claimant's hearing request submitted on 8/3/12. Based on the presented evidence, it is found that Claimant timely requested a hearing concerning termination of FAP benefits.

DHS must periodically redetermine an individual's eligibility for active benefit programs. BAM 210 (5/2012), p. 1. A complete redetermination is required at least every 12 months. *Id.*

The redetermination process begins with DHS mailing a redetermination packet in the month prior to the end of the benefit period. *Id.* at 4. The packet consists of forms and requests for verification that are necessary for DHS to process the redetermination. The forms needed for redetermination may vary, though a Redetermination (DHS-1010) is an acceptable review form for all programs. Verifications for redetermination must be provided by the end of the current benefit period or within 10 days after they are requested, whichever allows more time. *Id.* at 12.

Claimant initially stated that her sister dropped-off the Redetermination to DHS on 5/28/12. After discovering that the DHS office was closed on 5/28/12, Claimant recalled that the Redetermination was submitted on the Thursday or Friday prior to 5/28/12. Claimant conceded that she assumed that her sister submitted the form and did not witness the form's submission.

The relevant DHS office allows clients to submit forms in a drop-box located in the office lobby. A log sits next to the box to allow clients to sign their names as proof of a document submission. DHS obtained the drop-box logs for 5/24/12 and 5/25/12, the dates that Claimant believed the Redetermination was submitted. Neither Claimant's

name nor her sister's name appeared on the log. This is very persuasive evidence that the Redetermination was not submitted to DHS.

Claimant noted that she was hospitalized and in a nursing home for a five week period over 4/2012 and 5/2012. Claimant did not verify the stay, but Claimant was a very credible witness. Claimant's hospital stay was not found to be relevant because it was not disputed that Claimant received the Redetermination during hospital stay away had the means to deliver the Redetermination. It should be noted that Claimant could have also mailed the Redetermination.

Claimant also alleged that she made numerous calls to her specialist but never received a return phone call. This again was not deemed relevant because it was not disputed that the specialist informed Claimant to return whatever documents that Claimant had. Thus, Claimant had notice of her obligation to return redetermination documents though the Redetermination itself and from her specialist. Claimant also never made it clear why the alleged unreturned messages prevented her from timely returning the Redetermination.

Claimant was found to be a very credible witness who was in poor health at the time that her FAP benefit eligibility was redetermined. However, Claimant had no first-hand knowledge that a Redetermination was delivered to DHS and her cited proof of the delivery (the drop-box log) did not exist. Based on the presented evidence, it is found that Claimant failed to timely return a Redetermination to DHS. Accordingly, the termination of Claimant's FAP benefit eligibility is found to be proper. As discussed during the hearing, Claimant's proper remedy was to reapply for FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly terminated Claimant's FAP benefit eligibility effective 6/2012. The actions taken by DHS are AFFIRMED.



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

Date Signed: 10/26/2012

Date Mailed: 10/26/2012

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

CG/hw

cc:

