

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201321928
Issue No.: 3025
Case No.: [REDACTED]
Hearing Date: April 8, 2013
County: Macomb 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 April 8, 2013 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 terminated Claimant's eligibility for Food Assistance Program (FAP) due to a change in Claimant's state residency status.

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 reported to DHS that she was a Michigan resident.
3. On three occasions, 6/30/12, 8/9/12 and 9/3/12, Claimant's FAP benefit card was used in Nevada.
4. On an unspecified date in 9/2012, a DHS investigator went to Claimant's listed residence to investigate Claimant's out-of-state FAP benefit usage.
5. Upon visiting Claimant's residence, the investigator found Claimant at her reported Michigan residence.

6. On an unspecified date, DHS terminated Claimant's FAP benefit eligibility, effective 11/2012.
7. DHS did not mail a written notice to Claimant.
8. On 1/9/13, Claimant requested a hearing to dispute the FAP benefit termination.

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).

The present case concerns a FAP benefit termination. Prior to an analysis of whether the FAP benefit termination was proper, it must be determined whether Claimant timely requested a hearing.

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 (1/2013), p. 4. The 90 day time period can only begin running if DHS provides a client with a written notice of case action. In the present case, DHS conceded that no case action was sent to Claimant. Thus, Claimant timely requested a hearing and the substantive FAP benefit issue may be evaluated.

DHS conceded that no Notice of Case Action was issued when Claimant's FAP benefit eligibility was terminated. DHS presented testimony that the closure was based on Claimant's alleged failure to meet residency requirements.

DHS residence policy provides cryptic guidance on how Michigan residency is defined. For FAP benefits, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220 (1/2012), p. 1.

The FAP group composition policy also provides some guidance relevant to residency. A person who is temporarily absent from the group is considered living with the group. BEM 212 (4/2012). p. 2. A person's absence is temporary if the absence has lasted or is expected to last 30 days or less. *Id.* This policy implies that absences (from the household) longer than 30 days means a person is not temporarily absent, and therefore, no longer part of the FAP benefit group.

It was not disputed that Claimant's FAP benefit card was used in Nevada across three calendar months: on 6/30/12, 8/9/12 and 9/3/12 (see Exhibits 1-3). DHS interpreted the usage as proof of stoppage in Claimant's Michigan residency. In response, DHS dispatched an investigator to Claimant's residence. On an unspecified date in 9/2012, the investigator went to Claimant's residence and spoke with Claimant. If Claimant was living in Nevada in 9/2012, a DHS investigator could not have spoken with Claimant at Claimant's reported Michigan residence in 9/2012. Claimant's availability to the investigator in 9/2012 is persuasive proof of Claimant's Michigan residency.

Technically, the out-of-state benefit usage occurring over 6/30/2012-9/3/12 is irrelevant to eligibility of an ongoing benefit case. It may be relevant had DHS sought recoupment of an over-issuance. Claimant provided clarifying testimony explaining the benefit usage outside of Michigan. Claimant testified that she mixed up FAP benefit cards with her adult son (who had his own FAP benefit case) and the adult son was the one who used the FAP benefits in Nevada. Claimant did not verify her testimony but it was consistent with the facts.

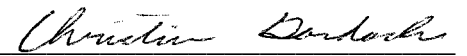
Based on the presented evidence, it is found that Claimant never ceased her Michigan residency or left her household. Accordingly, the FAP benefit termination was improper.

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 benefit eligibility. It is ordered that DHS:

- (1) reinstate Claimant's FAP benefit eligibility, effective 11/2012 subject to the finding that Claimant was a Michigan resident and a member of her FAP benefit group; and
- (2) supplement Claimant for any benefits improperly not issued.

The actions taken by DHS are REVERSED.


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

Date Signed: 4/12/2013

Date Mailed: 4/12/2013

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:

