

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201342995
Issue No.: 2006, 3021
Case No.: [REDACTED]
Hearing Date: May 22, 2013
County: Wayne 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 following Claimant's request for a hearing. After due notice, a telephone hearing was held on May 22, 2013, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUES

The first issue is whether DHS properly terminated Claimant's Medical Assistance (MA) eligibility due to Claimant's alleged failure to return a Redetermination.

The second issue is whether DHS properly terminated Claimant's Food Assistance Program (FAP) benefit eligibility due to an increase in assets.

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 and MA benefit recipient.
2. On an unspecified date in 11/2012, Claimant received approximately \$11,000 in cash from an unexpected source.
3. On 2/13/13, DHS mailed a Redetermination to Claimant.

4. On 2/28/13, DHS mailed Claimant a Notice of Case Action (Exhibits 1-2) informing Claimant of a termination of FAP benefit eligibility, effective 4/2013, due to Claimant having excess assets.
5. On 3/18/13, DHS mailed Claimant a Notice of Case Action (Exhibits 3-4) informing Claimant of a termination of MA benefit eligibility, effective 4/2013, due to an alleged failure by Claimant to complete a redetermination of benefits.
6. On 4/18/13, Claimant requested a hearing disputing the FAP and MA benefit terminations.

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).

Claimant requested a hearing to dispute a FAP benefit termination. It was not disputed that the basis for the termination was excess assets. It was also not disputed that Claimant received a minimum of \$11,000 in cash assets in 11/2012, and that Claimant reported the assets to DHS in 2/2013.

Assets must be considered in determining eligibility for FAP benefits. BEM 400 (1/2013), p. 1. The asset limit for FAP benefits is \$5,000 or less. *Id.*, p. 4. Cash assets, such as monies held in a bank account, count toward the asset limit. *Id.*, p.11.

Claimant testified that she gave the money away within a week after receiving it (in 11/2012) when she divided the money amongst her children. DHS responded that Claimant never reported disposing of the money. If Claimant's testimony was accepted as fact, then Claimant would have reported a change in circumstances that DHS should have considered prior to the benefit termination. DHS is to verify the value of countable assets at application, redetermination and when a change is reported. BEM 400 (1/2013), p. 43.

Claimant also testified that she reported to DHS in 2/2013 that she was going to give the money away. Claimant's testimony was inconsistent. If Claimant gave the money away in 11/2012, she would have no money left to give away in 2/2013. When asked about the inconsistency, Claimant said that she misspoke and that she gave the money away in 11/2012; Claimant's clarifying statement was not persuasive.

Further, even if Claimant's testimony were accepted as accurate, Claimant still failed to report a change in assets to DHS, she only reported a planned change (that she was

going to give the money away). Based on the presented evidence, it is found that Claimant failed to report a change in assets to DHS.

If Claimant did not report giving away the money to DHS prior to case closure, then DHS had every right to budget the money into Claimant's FAP benefit eligibility. As it was not disputed that Claimant's windfall exceeded the \$5,000 asset limit, it is found that DHS properly terminated Claimant's FAP benefit eligibility. Claimant can always reapply for FAP benefits.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Claimant also requested a hearing to dispute an MA benefit termination. It was not disputed that the termination was based on a failure by Claimant to complete a redetermination of 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.*, p. 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.*, p. 12.

In the present case, DHS alleged that a Redetermination was mailed to Claimant in 2/2013 and that Claimant failed to return the Redetermination by the deadline, the end of 3/2013. Claimant responded that she did not receive the Redetermination; therefore, she could not return to DHS what she never received.

During the hearing, DHS presented Claimant with Bridges (the DHS database) correspondence history. Claimant conceded that the history listed a Redetermination mailing in 2/2013. Claimant also testified that she lived at her current address for the last two years. Claimant's address stability makes it probable that the Redetermination was not misaddressed by DHS.

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). Based on the presented evidence, it is found that DHS established a presumption of receipt.

At the hearing Claimant presented DHS with a postmarked envelope dated 5/20/13. Claimant testified that the Redetermination dated 2/13/13 was mailed in the envelope postmarked 5/20/13. The envelope was potential evidence to rebut the presumption of receipt, in this case, timely receipt.

On the other hand, Claimant's evidence does not definitively establish what Claimant alleged. It is possible that the envelope dated 5/20/13 contained a completely different paper from the Redetermination and that Claimant's testimony was completely fabricated. It would also require accepting that the automated DHS mailing system is capable of a three month mailing delay. Part of the skepticism in accepting Claimant's testimony as fact is based on Claimant coincidentally receiving the Redetermination just one day prior to an administrative hearing.

On the other hand, it would be unlikely that Claimant would have saved a Redetermination for three months in the planning of presenting the Redetermination at an administrative hearing. DHS noted that Claimant could have ordered the Redetermination from a DHS representative without the testifying specialist's knowledge. As noted in the FAP benefit analysis, Claimant reported to DHS that she received \$11,000 in assets. Testimony verified that Claimant reported the assets to DHS without any prompting by DHS, albeit over two months after receiving the assets. Though Claimant's reporting amounted to doing only what she was required to do per DHS regulations, the reporting is consistent with someone who would not concoct a mildly complicated scheme concerning receiving a Redetermination. Based on the presented evidence, it is found that DHS mailed the Redetermination dated 2/13/13 to Claimant in 5/2013. Because DHS terminated Claimant's MA benefit eligibility based on Claimant's failure to return a document which DHS did not timely mail to Claimant, the termination is found to be improper.

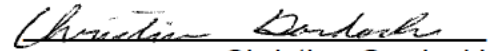
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly terminated Claimant's FAP benefits, effective 4/2013. 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 terminated Claimant's MA benefit eligibility. It is ordered that DHS:

- (1) reinstate Claimant's MA benefit eligibility, effective 4/2013, subject to the finding that DHS failed to timely mail Claimant a Redetermination; and
- (2) initiate supplement of any MA benefits not issued to Claimant in error.

The actions taken by DHS are REVERSED.


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

Date Signed: 5/31/2013

Date Mailed: 5/31/2013

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:

