

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201343384
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: July 1, 2013
County: Wayne DHS (19)

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 July 1, 2013, from Inkster, Michigan. Participants included the above-named claimant. [REDACTED], Claimant's spouse, testified on behalf of Claimant. [REDACTED] appeared as Claimant's attorney and authorized hearing representative (AHR). Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist.

ISSUES

The first issue is whether Claimant timely requested a hearing.

The second issue is whether DHS properly denied Claimant's application for Food Assistance Program (FAP) benefits due to a Claimant failure to verify 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. On 6/14/12, Claimant applied for FAP benefits.
2. Claimant's application did not note that Claimant's spouse owned a boat or owned a business.
3. DHS conducted an investigation and learned that Claimant's spouse was a boat and business owner at a time prior to 6/2012.

4. On 12/6/12, DHS mailed a Verification Checklist requesting proof of dissolution of the business and that Claimant's spouse no longer owned a boat.
5. The VCL due date was 12/17/12.
6. Prior to 1/7/13, Claimant returned to DHS a Certificate of Dissolution for the previously owned business.
7. On 1/7/13, DHS mailed a Notice of Case Action (Exhibits 1-3) denying the application.
8. Claimant did not receive the Notice of Case Action.
9. On 4/19/13, Claimant submitted a Request for Hearing to DHS disputing the FAP application denial.

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. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The first issue is a procedural matter. DHS mailed a Notice of Case Action to Claimant on 1/7/13. DHS verified the mailing by presenting the Notice of Case Action showing a 1/7/13 mailing date. It was not disputed that Claimant requested a hearing on 4/19/13, approximately 102 days after the written notice was mailed.

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 (4/2011), p. 4. The request must be received anywhere in DHS within the 90 days. *Id.*

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).

It was not disputed that the Notice of Case Action had Claimant's proper mailing address. Claimant initially testified that she failed to receive the Notice of Case Action. After examining the Notice of Case Action, Claimant admitted receiving the notice, but stated that she received the notice several weeks after it was mailed.

It is known that Claimant completed a "generic" Request for Hearing form in requesting a hearing- "generic" referring to a form not specifically tied to a case action. Many

clients request hearing on forms that are specifically tied to the case actions. Thus, Claimant's use of the generic Request for Hearing form is consistent with her testimony.

Claimant failed to verify any mailing difficulties. Claimant's testimony was generally unsupported. Nevertheless, her testimony was credible enough to justify a finding that she did not receive notice of the case action until long after the mailing date. The delay in the mailing is sufficient to excuse Claimant's 12 day tardiness in requesting a hearing. It is found that Claimant may proceed to the underlying issue of whether her FAP application was properly denied.

The present case concerns a FAP application denial. There was some dispute over the date of application. Claimant contended that the DHS denial concerned an application from 2/2012. Claimant failed to present any evidence to justify the contention. Claimant failed to explain why a 6/14/12 application was submitted to DHS if there was a previous application. It is found that the present case concerns an application dated 6/14/12.

It was not disputed that DHS denied the application due to Claimant's alleged failure to verify disposal of a boat and a closing of a business. Prior to determining whether Claimant complied with the DHS request for verification, it must be determined whether DHS had the authority to make a verification request. The analysis will begin with consideration of the verification for stopped income (i.e. proof of business termination).

DHS is to verify all non-excluded income at application, including a program add, prior to authorizing benefits. BEM 500 (4/2012), p. 9. DHS is to verify income that stopped within the 30 days prior to the application date or while the application is pending before certifying the EDG. BEM 505 (10/2010), p. 11. If eligibility fails due to lack of verification of stopped income, a client who reapplies, does not need to verify stopped income if it has been over 30 days. *Id.*

DHS presented an investigative report (Exhibit 4) in support of their justification for requiring verification of business dissolution. The report was completed on 8/26/11 and alleged ongoing ownership of a business. Based on the date of the investigative report, it was presumably performed in conjunction with some previous benefit application by Claimant.

DHS contended that verifications can be required at any time that DHS is aware of a previous income or asset from a client that is not verified to have stopped and/or disposed of. For income verifications, DHS policy explicitly contradicts the DHS contention.

Based on the above policy, it is clear that DHS may not require verification of a previously stopped income as a prerequisite for a benefit determination, unless the income was from 30 days prior to the application date. DHS had evidence of Claimant income approximately 10 months prior to the application date. Based on the presented evidence, DHS erred in denying Claimant's application based on a failure to verify

business dissolution because DHS had no basis to require verification of business dissolution.

It was not disputed that the application denial was based on an alleged failure by Claimant to verify a transfer of boat ownership. DHS presented testimony that they possessed information that Claimant owned a boat in 2009, but had no information concerning boat ownership since 2009.

DHS does not appear to have a policy justifying a verification request based on known previous ownership of an asset. DHS is to verify the value of countable assets at application, redetermination and when a change is reported. BEM 400 (7/2012), p. 43. This policy neither justifies nor prohibits a verification demand of an asset.

DHS contended that once it was verified that a client had ownership of any countable asset, from any point in time, it is a client's burden to verify non-ownership. During the hearing, DHS was asked if a client must verify ownership of a car owned from thirty years prior if DHS has a 30 year old document verifying vehicle ownership; the DHS response was in the affirmative.

The DHS contention is preposterous. A client has an obligation to verify non-ownership of a countable asset only when DHS has information to verify ongoing ownership. Perhaps, the requirement could be extended to a short period prior to the application date, such as the 30 day period used in the income analysis. Boat ownership three years prior to the application date is not a basis to justify a demand for proof of ongoing ownership.

Based on the presented evidence, the demand for verification of non-ownership is found to be improper. Taken in conjunction with the earlier finding that the request for business dissolution was improper, the denial of Claimant's application is also 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 improperly denied Claimant's application for FAP benefits. It is ordered that DHS:

- (1) reinstate Claimant's application dated 6/14/12 requesting FAP benefits;
- (2) process Claimant's application subject to the findings that DHS had an improper basis to request verification of business dissolution or verification of non-ownership of a boat; and
- (3) supplement Claimant for any benefits improperly not issued.

The actions taken by DHS are REVERSED.

Christian Gardocki

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

Date Signed: 7/10/2013

Date Mailed: 7/10/2013

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:

