

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-51898
Issue No.: 3014
Case No.: [REDACTED]
Hearing Date: August 14, 2013
County: Wayne (43)

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 August 14, 2013, from Detroit, Michigan. Participants included the above-named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist, and [REDACTED], Manager.

ISSUE

The issue is whether DHS properly affected Claimant's Food Assistance Program (FAP) eligibility following a reported change in household members.

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. On approximately 4/11/13, Claimant reported to DHS that she had foster children who should be factored into a benefit determination.
3. As of 4/11/13, the foster children reported by Claimant as living with her, received FAP benefits on a different grantee's case.
4. On 6/4/13, Claimant requested a hearing to dispute the failure by DHS to affect her FAP benefit eligibility from 4/2013 based on the change in household members.
5. On 6/4/13, Claimant also requested a hearing to dispute a Child Development and Care (CDC) determination.

6. Claimant testified that DHS has since changed the CDC determination and that she has no dispute regarding CDC eligibility.
7. As of 8/14/13, the date of hearing, DHS has not yet factored Claimant's foster children into Claimant's FAP benefit eligibility.

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 present case concerns a failure by DHS to add members to Claimant's FAP benefit eligibility. Claimant contended that the change should have affected her 4/2013 benefit eligibility.

A member add that increases benefits is effective the month after it is reported or, if the new member left another group, the month after the member delete. BEM 212 (11/2012), p. 7. It was not disputed that Claimant reported to DHS in 4/2013 that foster children were living in her household. DHS conceded the accuracy of Claimant's testimony.

DHS responded that at the time Claimant reported the change, the foster children received FAP benefits from a person on a separate FAP benefit case. It was not disputed that DHS continued to issue FAP benefits on the separate case through the date of the hearing. Based on the above policy, technically, DHS did not err by failing to add Claimant's foster children to her case because DHS continued improperly issuing FAP benefits on a separate case (i.e. no member delete occurred).

DHS also provides timelines for specialists to process changes. For FAP benefits, DHS is to act on a change reported by means other than a tape match within 10 days of becoming aware of the change. BAM 220 (11/2012), p. 5. "Act on" does not necessarily require that the change be processed to completion.

In cases where there is a dispute as to who is a primary caretaker for children, DHS has certain procedures which must be followed. The first step is to inform the DHS specialist responsible for the ongoing FAP benefit case that a person reported a change in the children's caretaker. That specialist would have 10 days to mail a Verification Checklist to the grantee requesting proof of the grantee's caretaker status. The Verification Checklist must allow 10 days for return of the documents. (see BAM 130). After the due date passes, DHS must evaluate the documents submitted by each person claiming custody and determine which benefits case the children rightly belong. If the person

receiving FIP benefits is deemed to no longer be the caretaker, they are still given timely notice of a benefit reduction removing group members from the case. A timely notice is mailed at least 11 days before the intended negative action takes effect. (see BAM 220). Thus, a process of approximately 45 days is appropriate for DHS to fully evaluate disputes in primary caretaker. After this process, the removed group member can be added to a benefit case effective the month following the negative action date.

In the present case, DHS has taken over 120 days, and not yet processed the group member change. The delay by DHS is deemed to violate their policy of processing changes. Had DHS followed their processing timelines, DHS would have affected Claimant's FAP eligibility, effective 6/2013.

Typically, an administrative finding that DHS violated a standard of promptness results in ordering DHS to process the uncompleted action. In those typical standards of promptness violations, there is a delay of benefits, not a loss of benefits. The standard of promptness violation in the present case will cost Claimant FAP benefits if DHS is merely ordered to process the change. Such an outcome would be unjust; however, an administrative order solely based on the desire for an equitable outcome is beyond the authority of an administrative judge. The present case presents two non-equity reasons to require DHS to redetermine Claimant's FAP eligibility from 6/2013.

First, equitable decisions are not based only on ideas of fairness or justice- not the violation of laws or regulations. The present case concerns a violation of a standard of promptness violation.

Secondly, the primary purpose of the policy requiring a member delete prior to adding the member is perceived to be the prevention of duplicate benefit issuances. DHS can prevent the duplication of FAP benefits by recouping (see BAM 705, 720 and 725) the improperly issued benefits from the grantee on the separate FAP case.

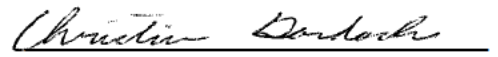
DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant's hearing request was resolved concerning CDC benefits. Claimant's hearing request is PARTIALLY DISMISSED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly failed to process Claimant's reported change in group composition. It is ordered that DHS:

- redetermine Claimant's FIP benefit eligibility, effective 6/2013, subject to the finding that DHS failed to meet their standards of promptness and should have added Claimant's foster children to Claimant's FAP group beginning 6/2013; and
- 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: 8/20/2013

Date Mailed: 8/20/2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

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

CG/hw

cc:

