

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201311840
Issue No.: 3021
Case No.: [REDACTED]
Hearing Date: January 3, 2013
County: Wayne DHS (55)

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 January 4, 2013 from Detroit, Michigan. Participants included the above-named claimant. [REDACTED] testified on behalf of 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) benefits due to excess 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 benefit recipient.
2. In 10/2012, Claimant received \$10,000 in lottery winnings from the State of Michigan.
3. On 11/8/12, DHS initiated termination of Claimant's FAP benefit eligibility effective 12/2012 due to excess assets.
4. On 11/13/12, 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).

Claimant requested a hearing to dispute a FAP benefit application denial. It was not disputed that the basis for the denial was excess assets.

Assets must be considered in determining eligibility for FAP benefits. BEM 400 at 1. The asset limit for FAP benefits is \$5,000 or less. *Id.* at 4.

It was not disputed that Claimant cashed lottery winning in 10/2012 from the State of Michigan totaling \$10,000 in 10/2012. DHS learned of the winnings and took action on Claimant's FAP benefit eligibility on 11/8/12. The DHS action relied on an exceptionally reasonable assumption, that Claimant was the rightful owner of the lottery winnings because she collected the winnings from the State of Michigan. As of 11/8/12, the date of FAP benefit closure, the evidence only established that the DHS termination was proper.

Claimant contended that her coworker was the true owner of the lottery winnings. Claimant and her coworker testified that Claimant was asked to collect the lottery winnings because her coworker did not have a social security card and that he anticipated the State of Michigan to not issue the winnings until he presented one. The coworker also testified that shortly after Claimant assumed responsibility for the winnings, he attempted to assume any responsibility for the winnings.

The initial thought process was that it was unfair to DHS to allow Claimant to deny responsibility of the lottery winnings after assuming responsibility for purposes of collecting the winnings. Though the above logic is sensible, it does not consider whether DHS had a responsibility to provide Claimant an opportunity to prove that her coworker was the true owner of the winnings.

Timely notice is given for a negative action unless policy specifies adequate notice or no notice. BAM 220 at 4. A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pended to provide the client a chance to react to the proposed action. *Id.* Bridges automatically calculates the negative action date. *Id.* at 9. The negative action date on Bridges is the day after the timely hearing request date on the Bridges notice of case action. *Id.*

It was not established whether DHS knew of Claimant's story prior to 11/8/12. It was established that DHS terminated Claimant's FAP benefit eligibility on 11/8/12, and that

the negative action effective date was 11/19/12. Thus, Claimant had until 11/19/12 to react to the negative action. The issue of when DHS was placed on notice of Claimant's explanation was a poorly developed hearing issue. However, it is known that Claimant requested a hearing on 11/13/12, well before the negative action date. The evidence that was presented tended to support a finding that DHS knew that Claimant denied keeping the lottery winnings. The evidence also established that DHS did not give Claimant an opportunity to verify whether Claimant kept the assets after she received them. The failure by DHS to give Claimant this opportunity is reversible error.

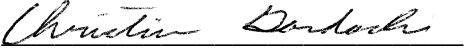
It should be noted that this decision does not address whether Claimant kept or transferred the lottery winnings. This decision is limited to requiring DHS to provide Claimant an opportunity to verify whether she kept or transferred the winnings.

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 effective 12/2012. It is ordered that DHS:

- (1) reinstate Claimant's FAP benefit eligibility, effective 12/2012, subject to the finding that Claimant was not given an opportunity to establish that the lottery winnings were transferred;
- (2) mail Claimant a Verification Checklist requesting proof of transferred ownership of the lottery winnings; and
- (3) supplement Claimant for FAP benefits not issued as a result of the improper benefit termination.

The actions taken by DHS are REVERSED.


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

Date Signed: January 11, 2013

Date Mailed: January 11, 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:

