

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

IN THE MATTER OF:



Reg. No.: 2013-66443
Issue No.: 3022
Case No.: [REDACTED]
Hearing Date: October 17, 2013
County: Wayne (82-41)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on October 17, 2013, in Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED]

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) case effective November 30, 2012?

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 recipient of FAP benefits.
2. On October 16, 2013, the Department sent Claimant a FAP redetermination and requested that she return the completed document by November 2, 2012, and participate in a phone interview on November 2, 2012.
3. On November 2, 2012, the Department sent Claimant a Notice of Missed Interview.
4. On November 30, 2012, Claimant submitted a completed redetermination.
5. On November 30, 2012, Claimant's FAP case closed.

6. On August 22, 2013, Claimant filed a request for hearing disputing the Department's actions.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

Additionally, Claimant contended that that Department had improperly closed her FAP case effective November 30, 2012, and she was entitled to FAP supplements for benefits she was denied from December 1, 2012, until March 31, 2013, after which she reapplied and was approved for FAP benefits.

The Department contended that Claimant's hearing request filed on August 22, 2013, was not timely. While a recipient of Department benefits who is aggrieved by a Department action is entitled to a hearing, the client must request the hearing within *90 calendar days from the date of the written notice of case action*. Mich Admin Code, R 400.903(1); BAM 600 (July 2013), p. 4 (emphasis added).

In this case, the Department conceded that no notice of case action was issued in this case but contended that one was not required because Claimant had not completed the redetermination process and, as a result, her FAP case was not recertified and her benefits lapsed. BAM 210 (July 2013), p. 9, provides that, if the redetermination packet is not logged in by the last working day of the redetermination month, the Department automatically closes the FAP case and no notice of case action, DHS-1605, is generated. However, in this case, a redetermination was received by the Department on November 30, 2012, the last day of the redetermination month. Because the redetermination was logged in, or should have been logged in, before the certification period expired, the Department would be required to notify Claimant in writing through a notice of case action if her FAP case was not recertified. In failing to do so, the Department did not act in accordance with Department policy.

Claimant testified that, because she did not receive written notice, she was not aware that her case had closed, explaining that she had received a significant supplement of FAP benefits deposited onto her Bridge card in August 2012 that kept her from being aware that continuing monthly FAP issuances had terminated as of November 30, 2012.

While Claimant became aware of the closure of her case by April 4, 2013, when she reapplied for FAP benefits, she testified that she was not aware of her right to request a hearing. A notice of case action advises a client of the right to request a hearing. BAM 220 (July 2013), p. 2. In the absence of any notice of case action being sent to Claimant in this case advising her of her rights to request a hearing, Claimant's hearing request is not deemed untimely, and the merits of her case are considered.

In this case, the Department testified that Claimant's FAP case closed because she had failed to participate in an interview required to complete the redetermination process. A client must complete a redetermination at least every 12 months in order for the Department to determine the client's continued eligibility for benefits. BAM 210 (November 2012), p. 1. FAP benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. BAM 210, p. 2. A client's FAP redetermination includes a telephone interview with the Department. BAM 210, p. 3. A redetermination/review packet must be received from the client before an interview can be conducted. BAM 210, p. 9. If the client misses the interview, the Department sends a DHS-254, Notice of Missed Interview. BAM 210, p. 3.

At the hearing, the Department established that it sent Claimant a FAP redetermination form with a November 2, 2012, due date that scheduled a phone interview on November 2, 2012. When the Department failed to receive the completed redetermination form, it sent Claimant a Notice of Missed Interview on November 2, 2013, advising her that she had missed her scheduled interview and that it was her responsibility to reschedule the interview before November 30, 2012, or the redetermination would be denied.

The Department received Claimant's completed redetermination on November 30, 2012. The Department worker's notes dated December 13 on the redetermination show that the worker attempted to contact Claimant at least 3 times to conduct the phone interview but was unable to reach her. A client who fails to file the FAP redetermination by the timely filing date or who fails to participate in a scheduled interview loses her right to uninterrupted FAP benefits. BAM 210, p. 14. However, when a group is at fault for the delay, the Department must complete processing the redetermination within 30 days, and if there is no refusal to cooperate and the group complies by the 30th day, the Department must issue benefits within 30 days. BAM 210, p. 14.

In this case, the worker's handwritten notes on the redetermination indicate that she made an attempt to contact Claimant. However, the worker did not participate in the hearing to identify what dates she attempted to contact Claimant. Claimant credibly testified that she was addressing various health issues at the time she submitted her redetermination and, contrary to her worker's comments, had been in ongoing contact with her worker and believed that she had complied with the interview requirement. Because Claimant had not shown a refusal to cooperate and because less than 30 days had lapsed between the time Claimant submitted her redetermination and the date the worker concluded she could not reach Claimant, the Department did not act in accordance with Department policy when it closed Claimant's FAP case.

DECISION AND ORDER

Accordingly, the Department's decision is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Claimant's FAP case effective December 1, 2012;
2. Process Claimant's November 30, 2012, redetermination;
3. Issue supplements to Claimant for FAP benefits she was eligible to receive, if any, between December 1, 2012, and March 31, 2012; and
4. Notify Claimant in writing of its decision.



Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: October 23, 2013

Date Mailed: October 24, 2013

NOTICE OF APPEAL: 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.

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).

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.

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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

ACE/pf

cc:

