

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-15297
Issue No(s): [REDACTED]
Case No.: 3002
Hearing Date: February 4, 2014
County: Macomb #12

ADMINISTRATIVE LAW JUDGE: Michael S. Newell

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, a telephone hearing was held on February 4, 2012, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED] Eligibility Specialist.

ISSUE

Did the Department properly terminate Claimant's FAP benefits?

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 July 20, 2013, the Department issued Claimant a Notice of Case Action, closing MA benefits for [REDACTED] effective August 1, 2013.
2. The Notice was sent to Claimant's address of record at the time, which was the same as Claimant's current address at the time of the hearing.
3. Claimant received the July 20, 2013 Notice of Case Action,
4. On October 21, 2013, the Department sent Claimant a verification checklist requesting 30 days of check stubs by October 31, 2013. (Exhibit 4).
5. The Notice stated that failure to provide the information could result in benefits being "denied, decreased, or canceled."
6. Claimant sent in one pay stub on November 7, 2013.

7. On November 25, 2013, the Department closed Claimant's FAP benefits effective May 1, 2013 for failure to verify.
8. Claimant requested a hearing on December 2, 2013.
9. The Department's Hearing Summary stated that the effective date of the negative action was December 1, 2013.

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, the Administrative Law Judge lacks jurisdiction to address the July 20, 2013 Notice of Case Action because Claimant did not file a hearing request within 90 days of the Notice.

Michigan adopts the mailbox rule which is a presumption under the common-law that letters have been received after being placed in the mail in the due course of business. *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). In other words, the proper mailing and addressing of a letter creates a presumption of receipt but 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). Under the mailbox rule, evidence of business custom or usage is allowed to establish the fact of mailing without further testimony by an employee of compliance with the custom. *Good, supra*. Such evidence is admissible without further evidence from the records custodian that a particular letter was actually mailed. *Good supra* at 275. "Moreover, the fact that a letter was mailed with a return address but was not returned lends strength to the presumption that the letter was received." *Id* at 276. The challenging party may rebut the presumption that the letter was received by presenting evidence to the contrary. See *id*.

Here, Claimant did not rebut the presumption. When asked whether Claimant received other items, such as the Verification Checklist, Claimant indicated that she may have received it. It appears Claimant was unsure about what she received from the Department.

Concerning the November 25, 2013 Notice of Case Action, BAM 130, p 6 requires negative action notice because the verification deadline had passed without proper verification. The requirements to provide 30 days of check stubs was clear on the

Verification Checklist, Claimant did not deny receiving the checklist, and she had other checks during the month at issue that she failed to provide..

However, the Department made the closure retroactive to May 1, 2013. The Administrative Law Judge is not aware of any justification for retroactive closure, and the Closure date seems to be a typo. Indeed, the Department stated on the Hearing Summary that benefits would have been cancelled effective December 1, 2013, which would have been appropriate.

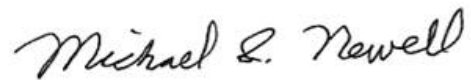
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it closed Claimant's FAP benefits effective May 1, 2013.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the FAP closure and **REVERSED IN PART** with respect to May 1, 2013 to November 30, 2013.

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. Redetermine eligibility from the May 1, 2013 closure date to November 30, 2013.
2. Cancel Claimant's FAP benefits effective December 1, 2013.



Michael S. Newell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 13, 2014

Date Mailed: February 13, 2014

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.

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

MSN/las

cc:

