

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

IN THE MATTER OF:



Rehearing Reg. No.: 2014-32561
Old Reg. No.: 2013-25445
Issue No.: 3014
Case No.: [REDACTED]
Hearing Date: May 20, 2014
County: Wayne #76

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

DECISION AND ORDER OF REHEARING

This matter is before this undersigned Administrative Law Judge pursuant to a timely Request for Rehearing/Reconsideration of the Hearing Decision generated by the assigned Administrative Law Judge at the conclusion of the hearing conducted on May 20, 2014.

The Rehearing and Reconsideration process is governed by the Michigan Administrative Code, Rule 400.919, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program or programs at issue, and **may** be granted so long as the reasons for which the request is made comply with the policy and statutory requirements.

This matter having been reviewed, an Order Granting Rehearing/Reconsideration was generated March 27, 2014.

The Claimant was represented at the de novo hearing by himself. The Department was represented by [REDACTED], FIM/HF and [REDACTED], FIS.

ISSUE

1. Did the Administrative Law Judge err in denying the Claimant's application for FAP dated November 4, 2012 because the Claimant was living with his parents?

FINDINGS OF FACT

Upon a review of the entire hearing record, including the recorded testimony and evidence admitted, in addition to a review of the applicable law and policy governing the issues in this matter, this Administrative Law Judge makes the following findings of fact:

1. On November 4, 2012, the Claimant applied for FAP benefits.

2. On December 19, 2012, the Department denied Claimant's application due to the Claimant was 18 years of age and still living with his parents.
3. On December 19, 2012, the Department sent the Claimant notice of the denial.
4. On January 28, 2013, Claimant filed a hearing request, protesting the denial of the application, but did not state which application he requesting the hearing for whether the November 4, 2012 or the December 28, 2012. The Department made the assumption that his hearing request was for the November 4, 2012 application and wrote up the hearing summary accordingly.
5. On March 11, 2013, the Administrative Law Carmen G. Fahie issued a decision and order upholding the Department's denial.
6. On April 19, 2013, the Claimant filed a request for a rehearing because he disagreed with the Administrative Law Judge's ruling.
7. A rehearing was granted by Administrative Law Manager Colleen M. Mamelka on March 27, 2011 and reassigned to Administrative Law Judge Carmen G. Fahie.
8. A de novo hearing was conducted on May 20, 2014.
9. During the hearing, the Claimant admitted that he was requesting a hearing on his December 28, 2012 FAP application denial, which was the 2nd FAP application that he had filed when he was no longer living with his parents, but with his girlfriend and their child at his grandmother's house, not a rehearing on the previous hearing decision for FAP that was denied because the Claimant was under 22 years of age and living with his parents filed on November 4, 2012.
10. The Administrative Law Judge proceeded with the hearing on the 2nd FAP application received by the Department on December 28, 2012.
11. According to the Department, the Claimant filed an on-line application for FAP on December 28, 2012. The Department failed to submit a copy of the on-line application to verify the Claimant's address at the hearing.
12. According to the Department, the Claimant's FAP application of December 28, 2012 was denied on January 23, 2013 for failure to provide verification. A copy of the verification checklist or the notice of case action was not provided by the Department at the hearing.

CONCLUSIONS OF LAW

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.

A **rehearing** is a full hearing which is granted when:

- The original hearing record is inadequate for purposes of judicial review.
- There is newly discovered evidence **that existed** at the time of the original hearing that could affect the outcome of the original hearing decision.

The department, client or authorized hearing representative may file a written request for rehearing/reconsideration. Request a rehearing/ reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing, and 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 rose in the hearing request.

The Department, AHR or the client must specify all reasons for the request. BAM, Item 600, page 32-33. SOAHR (Michigan Administrative Hearing System (MAHS)) will either grant or deny a rehearing/reconsideration request and will send written notice of the decision to all parties to the original hearing.

SOAHR grants a rehearing/reconsideration request if:

- The information in the request justifies it; **and**
- **There is time to rehear/reconsider the case and implement the resulting decision within the standard of promptness; see STANDARDS OF PROMPTNESS in this item.**
- **If the** client or authorized hearing representative made the request and it is impossible to meet the standard of promptness, the client or authorized hearing representative may waive the timeliness requirement in writing to allow the rehearing/reconsideration.

If a rehearing is granted, or if the need for further testimony changes reconsideration to a rehearing, SOAHR (MAHS) will schedule and conduct the hearing in the same manner as the original.

Pending a rehearing or reconsideration request, implement the original Decision and Order unless a circuit court or other court with jurisdiction issues an Order which requires a delay or stay.

If such an order is received by the client, SOAHR (MAHS), the court or the Legal Affairs, or if there are questions about implementing the order; see Administrative Handbook manual Legal & FOIA Issues (AHN) item 1100, How to Obtain Legal Services. BAM, Item 600.

Previously, the Claimant submitted his parent's address where he was living when he applied for FAP on November 4, 2012. Since the Claimant is 18 years of age and still living with his parents, he was not eligible for his own FAP case until he is 22 years of age. As a result, the Department properly denied the Claimant's FAP application because he was still residing with his parents.

During the hearing on March 5, 2013, the Claimant's 2nd application was not addressed even though the Claimant hearing request was received by the Department on January 28, 2013. The Claimant's first FAP application of November 4, 2012 was denied December 19, 2012. The Claimant filed a 2nd application for FAP on December 28, 2012 that was denied on January 23, 2013. The Department's hearing summary dated January 29, 2013 only addressed the November 4, 2012 application. As a result, this Administrative Law Judge only addressed the first application dated November 4, 2012 and not the 2nd application dated December 28, 2012.

During the hearing, the Department has the burden of proof to prove that they appropriately followed policy in processing the Claimant's FAP application of December 28, 2012. The Department could not provide a copy of the online application, verification checklist, nor notice of case action. As a result, the Department has failed to meet their burden.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Administrative Law Judge did properly uphold the Department for the first application dated November 4, 2012 because the Claimant was living with his parents and under the age of 22. However, the Claimant's 2nd application dated November 28, 2012 was not addressed at the previous hearing, but has been address as this rehearing. The Department has failed to meet their burden that they properly processed the Claimant's December 28, 2012 application for FAP.

Accordingly, it is ordered that the March 11, 2013, decision of the Administrative Law Judge generated at the conclusion of the March 5, 2013, hearing and mailed on March 12, 2013, is **PARTIALLY REVERSED** and the action taken by the Department is **PARTIALLY NOT UPHELD.**

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate a redetermination of the Claimant's eligibility for FAP by re-registering and reprocessing the Claimant's December 28, 2012 FAP application.
2. Provide the Claimant with written notification of the Department's revised eligibility determination.

3. Issue the Claimant any retroactive benefits she/he may be eligible to receive, if any.

Carmen G. Fahie

Carmen G. Fahie
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 20, 2014

Date Mailed: June 20, 2014

NOTICE: The law provides that within 30 days of receipt of the above Reconsideration Decision and Order, the Claimant may appeal it to the circuit court for the county in which he/she lives.

CGF/tb

cc:

