

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

IN THE MATTER OF:

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Reg. No.: 14-007070
Issue No.: 3001
Case No.: ██████████
Hearing Date: AUGUST 18, 2014
County: MACOMB-DISTRICT 12

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, a telephone hearing was held on August 18, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████, Hearing Facilitator.

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) case?

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. Following a FAP redetermination in which Claimant's FAP eligibility period was recertified, the Department concluded that Claimant had failed to provide verification of the earned income of her living-together-partner (LTP) and sent Claimant a May 24, 2014 Verification Checklist (VCL) requesting verification of the LTP's income by June 3, 2014.
3. On July 7, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP case was closing effective August 1, 2014 because (i) she had failed to verify the LTP's earned income and (ii) the LTP had two drug-related felonies.

4. On July 15, 2014, Claimant requested a 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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

Additionally, Claimant requested a hearing concerning the closure of her FAP case. The July 17, 2014 Notice of Case Action notified Claimant that her FAP case was closing effective August 1, 2014 because (i) she failed to verify the LTP's earned income and (ii) the LTP was ineligible because he had been convicted of at least two drug-related felonies since August 22, 1996.

At the hearing, the Department acknowledged that the income verifications requested in the May 24, 2014 VCL were unnecessary because it had received adequate verification of the LTP's income at the time it processed Claimant April 2014 redetermination. Therefore, the Department did not act in accordance with Department policy to the extent it relied on Claimant's failure to verify requested information in closing Claimant's FAP case.

The July 17, 2014 Notice also cited the fact that the LTP had two drug-related felonies as another basis for the closure of Claimant's case. An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified from the FAP program if both offenses occurred after August 22, 1996. BEM 203 (July 2014), p. 2. In this case, the LTP admitted that he had two drug-related felonies since August 22, 1996. Therefore, the Department acted in accordance with Department policy when concluded that he was a disqualified person for FAP purposes.

However, when an individual is disqualified from the FAP program due to two drug-related felonies, he is excluded from the FAP group and his earned and unearned income is included in the calculation of the household's gross income to determine the group's FAP eligibility. BEM 212 (July 2014), p. 9; BEM 550 (February 2014), p. 3. Therefore, the fact that the LTP was disqualified from FAP did not automatically result in the ineligibility of the remaining household members. Therefore, the Department did not

act in accordance with Department policy to the extent that it relied on the LTP's drug-felony disqualification in closing Claimant's FAP case.

In her hearing request, Claimant asked that the Department continue to issue FAP benefits to her in the amount that she currently received until the hearing is decided. At the hearing, Claimant expressed concerns because the Department had not complied with this request. When the Department receives a timely hearing request, which is one received within 10 days of the date the notice of case action was issued (or the following day, if the 10th day is a non-workday), the Department must continue to issue to the client the assistance authorized prior to the notice of negative action. BAM 600 (July 2014), p. 23. For FAP only, benefits are reinstated to the former level *only if* the benefit period has not expired. BAM 600, p. 23.

In this case, Claimant submitted to the Department a hearing request concerning the July 7, 2014 Notice of Case Action on July 15, 2014. Because Claimant's hearing request was received within 10 days from the date of the negative Notice of Case Action was issued, Claimant's hearing request was timely. Furthermore, the Department confirmed that Claimant's FAP redetermination had been previously processed and that her FAP certification period had been renewed; the July 7, 2014 Notice of Case Action resulting in the future closing of Claimant's FAP case was not due to the expiration of her FAP benefit period. Under these circumstances, Claimant was eligible to receive ongoing FAP benefits pending the hearing decision, and the Department did not act in accordance with Department policy when it failed to continue to restore Claimant's FAP benefits to the prior level period pending the hearing concerning her FAP case.

There was evidence presented at the hearing that, prior to the hearing, the Department reprocessed Claimant's FAP eligibility, excluding the LTP from the FAP group but considering his income, and concluded, based on a group size of three, that Claimant was not income eligible for FAP benefits. The Department testified that it sent Claimant a Notice of Case Action on August 14, 2014 notifying her of her FAP ineligibility based on excess income. However, pending the hearing decision from the current hearing, restored benefits must not be reduced or terminated unless (i) a change not related to the hearing issue occurs that affects the recipient's eligibility or benefits **and** (ii) the recipient fails to request a hearing about the change after the subsequent notice of case action. BAM 600 (July 2014), pp. 24-25. Because the Department's actions in the August 14, 2014 related to the current hearing issue, namely, the processing of Claimant's FAP case based on the LTP's felony-drug convictions, the Department was precluded from reducing or terminating the restored benefits until this Hearing Decision.

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 did not act in accordance with Department policy when it closed Claimant's FAP case.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.

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 August 1, 2014;
2. Remove the August 14, 2014 negative action concerning Claimant's FAP case from her record; and
3. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from August 1, 2014 ongoing.



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

Date Signed: **8/25/2014**

Date Mailed: **8/25/2014**

ACE / tlf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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