

**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.: 14-005177
Issue No.: 3001
Case No.: ██████████
Hearing Date: August 11, 2014
County: Oakland (2-Madison Hts)

ADMINISTRATIVE LAW JUDGE: Jonathan W. Owens

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 August 11, 2014, from Madison Heights, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████
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ISSUE

Did the Department properly determine Claimant's eligibility for Food Assistance Program (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 April 3, 2014, Claimant's FAP benefits were due for redetermination.
2. On April 29, 2014, Claimant submitted the redetermination packet.
3. On May 16, 2014, the Department processed Claimant's redetermination.
4. On June 18, 2014, Claimant filed a request for hearing.

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.

In the instant case, Claimant asserts the Department made the following errors in regards to her FAP benefits:

1. The Department's alleged failure to respond to Claimant's issues regarding her online account being locked and her inability to complete her redetermination online.
2. The Department's alleged failure to call Claimant on the scheduled date and at the scheduled time to review her FAP redetermination.
3. The Department's alleged failure to log Claimant's returned redetermination packet resulting in FAP benefits closure.
4. The Department's alleged failure to provide Claimant with a proper written notice of case action including a budget showing her the figures utilized in figuring her income.
5. The Department's alleged failure to remove earnings for the month of January 2014 from consideration based upon a family illness impacting Claimant's ability to work.
6. The Department's alleged failure to inquire about Claimant's income and any anticipated income or earning changes.
7. The Department's alleged failure to ask Claimant for her earnings for the month of April 2014.
8. The Department's alleged failure to issue a FAP supplement to Claimant for the month of August 2013.

The Department issued a redetermination packet to Claimant on March 11, 2014. This packet indicated that Claimant was to participate in a phone interview on April 3, 2014, at 11:30 am. The instructions provided indicated that Claimant was to complete the review by returning the documents to the Department. Claimant had an option to complete this online or renew via mail. Claimant testified she was unable to access her online account. Claimant did not assert that she did not receive her redetermination packet mailed on March 11, 2014.

At hearing, Claimant provided an email dated April 5, 2014, she had sent to the DHS-MiBridges Tech Support requesting assistance with a password reset. Claimant testified the Department never contacted her on April 3, 2014, to conduct her interview. The Department did not dispute Claimant's assertion that she was not called on April 3, 2014. Claimant provided a second email she had sent to the Department worker on May 14, 2014, in which she stated she had contacted the Department on the date of her interview regarding the inability to access her account online to complete her review. She further noted in this email that she had dropped off the redetermination paperwork at the Department office on April 29, 2014, and requested the Department contact her by May 15, 2014.

Claimant asserts the Department failed to record that her redetermination packet had been received as required by policy. The Department testified the packet was logged in but may not have been logged in prior to the end of the certification period. Claimant's case was closed as a result of the redetermination not being completed prior to April 30, 2014. It is important to note that, while the Department acknowledged the redetermination packet was received on April 29, 2014, there was no testimony provided that would indicate the worker processing Claimant's case actually had possession of the redetermination packet on April 29, 2014. According to BAM 210, p. 13, the redetermination paperwork must be received by the 15th of the redetermination month in order to be considered timely and for the FAP benefits not to be interrupted. Here, Claimant's documents were received well after the 15th of the redetermination month. Therefore, the Department processed Claimant's redetermination in accordance with BAM 210, p. 14, which indicates any FAP redetermination form **not** submitted timely has the same processing timeframe as an initial application, which is 30 days.

The Department testified that a second redetermination packet was mailed to Claimant on April 15, 2014. Claimant testified she never received a second packet. Claimant testified she had left voicemails at the Department indicating there had been changes in her income. Claimant did not provide specific dates on which these calls were alleged to have been made. The Department testified that, on May 15, 2014, a phone interview was completed with Claimant. Claimant testified the call she received was while she was heading to work. She testified that the Department never inquired about her income or changes in her income. Claimant testified she did not have her papers in front of her and she stated no questions or information was requested regarding her income or employment. The Department representative testified that, when she completes interviews, she uses a standard script. She always asks whether the person filed income taxes and whether the person kept records of income and also asks about earnings for the prior three months. The Department testified that Claimant had indicated she had not filed her income taxes yet, but she did have records of her income and she had provided the income for the prior three months.

The Department testified Claimant's redetermination was completed according to policy and the income reported on April 29, 2014, was inputted into BRIDGES. The Department determined Claimant was ineligible based upon her student status and her

earnings not equaling 20 hours a week at the Federal minimum wage of \$7.25 an hour. The Department provided no budgets at hearing. Claimant submitted income for the months of January 2014, February 2014 and March 2014. Claimant indicated on her January 2014 earnings statement that she had worked 90 hours that month and earned \$600. Claimant indicated on her February 2014 earnings statement she had worked 90 hours that month and earned \$650. Claimant indicated on her March 2014 earnings statement she had worked 90 hours that month and earned \$605. The Department determined that, based upon these three amounts, Claimant was working less than 20 hours per week. The Department averaged the three reported months which came to \$618.22 per month. The Department then testified that the average monthly amount should be divided by \$7.25, the Federal minimum wage, which equaled 85.29 hours worked per month. This was then divided by 4.3 to yield 19.83 hours per week. According to the Department, this falls short of the required 20 hours per week for those classified in the student status. According to BEM 245, p. 4, in order to be eligible for FAP benefits, Claimant's self-employment weekly earnings would need to equal the federal minimum wage of \$7.25 multiplied by 20 hours (i.e., \$145) at the very least.

While the above policy is applicable, this Administrative Law Judge, however, notes that, when examining the records submitted, Claimant's actual reported hours and earnings should also be considered. In this case, Claimant reported 90 hours worked in each of the three months. Based upon the reported hours, Claimant was earning \$6.67 an hour in the month of January, \$7.22 an hour in the month of February, and \$6.72 an hour in the month of March. Accordingly, Claimant's own reported earnings would indicate she was working for less than \$7.25 per hour.

Claimant asserts she had informed the Department on prior occasions her earnings for the month of January 2014 were less due to a family illness. Upon review, the records indicate there was a minimal difference in monthly earnings. The same customers appear to have been serviced during the month of January 2014; Claimant indicated she worked 90 hours and showed 7 service dates for the month. In February, Claimant reported 90 hours of work and showed 7 service dates for the month. In March, she reported 90 hours of work and showed 6 service dates for the month. Claimant's records fail to demonstrate less work being performed during the month of January. Therefore, Claimant's assertion that her earnings were impacted by a family illness was not demonstrated.

Claimant then asserts her monthly earnings for March 2014 were incorrect. Claimant testified she did not discover until later that she had not indicated a new client had been added in the month of March 2014. Claimant asserts her actual earnings for the month of March 2014 was \$730 rather than the \$605 she reported to the Department. Claimant asserts the Department should have requested more information regarding her earnings.

This Administrative Law Judge finds that Claimant's complaint regarding the Department's failure to respond to her issues of her online account being locked and

her inability to complete her redetermination online are without merit. Claimant was sent a redetermination packet on March 11, 2014, well before the April 3, 2014, due date. While Claimant may have had issues with her online account, she did have an option to submit her materials to the Department via mail or in person. Claimant had adequate time to complete the process before the April 3, 2014, due date.

Claimant's complaint regarding the Department's failure to call her on the date and scheduled time for her FAP redetermination is found to be harmless. Claimant had not complied with submitting her documentation for the redetermination to be timely completed. According to Claimant's own testimony, Claimant had placed calls to the Department indicating she was locked out of her account. The Department's failure to call Claimant on the scheduled date and time fails to change anything regarding Claimant's FAP redetermination.

Claimant's assertion that it was the Department's failure to comply with policy by not logging in her returned redetermination packet that caused her FAP benefits case to close is without merit. Claimant failed to return the redetermination packet to the Department prior to 15th of the month as noted above. Therefore, Claimant's continued FAP benefits were in jeopardy, not because of the packet not being logged in on April 29th but because they were not received timely.

Claimant's complaint that the Department failed to provide a proper written notice of case action is also without merit as Claimant's FAP benefits were originally ended due to her failure to complete her redetermination timely. BAM 220, p. 5, indicates no notice is required when the FAP closure is due to a certification period expiration. The Department did send a DHS-176 on June 26, 2014, indicating that Claimant's FAP benefits ended based upon not meeting the required 20 hours of employment per week for a person in student status. The lack of notice fails to change Claimant's eligibility for FAP benefits.

Claimant's assertion that the Department should have removed the month of January 2014 earnings from consideration was already noted to be unfounded. Claimant failed to demonstrate that the January 2014 earnings were so outside the norm of the other two months of earnings she provided that they warranted removal from consideration.

Claimant's assertion that the Department failed to complete a proper telephone interview is also found to be without merit. Claimant's testimony, in which she indicated no questions were asked regarding income during the phone interview, is found to be less than credible. Claimant would have this Administrative Law Judge believe she had left messages regarding changes in her income yet, when afforded a phone interview, she herself would not have mentioned these same alleged changes to Department. The Department properly demonstrated a phone interview was completed on May 15, 2014. The Department's testimony regarding following a script when completing a phone interview with Claimant was found credible.

Claimant's assertion that the Department failed to ask for her earnings for the month of April 2014 is also found to be without merit. The Department initiated the FAP redetermination in March 2014. Claimant supplied the requested months of income and the Department properly utilized those months for budgeting purposes. Claimant did not provide any indication on her forms or during the interview that her income or hours had increased or that she anticipated an increase.

Finally, Claimant indicated she had previously requested a hearing on February 20, 2014, regarding her FAP benefits. This hearing request was filed regarding a case action dated September 19, 2013. On February 24, 2014, the Department completed a hearing summary in which they noted Claimant withdrew her February 20, 2014, hearing request. The Department indicated that Claimant's FAP benefits for the months of August 2013 and September 2013 were incorrect. The FAP benefit level should have been \$200 per month and not the previously paid \$87 per month. The Department noted a help ticket was created to supplement Claimant for the loss in FAP benefits. Claimant testified she had not received the supplement her for the month of August 2013. Claimant now wishes to have this Administrative Law Judge enforce a previously promised case action the Department indicated they would complete.

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 400.901 through R 400.951. Rule 400.903(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because [a] claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by a Department action resulting in suspension, reduction, discontinuance, or termination of assistance.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Mich Admin Code, R 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 provides in relevant part as follows:


The client or authorized hearing representative has *90 calendar days from the date of the written notice of case action to request a hearing*. The request must be received anywhere in DHS within the 90 days. [Emphasis added.]

After reviewing the evidence and testimony presented, this Administrative Law Judge finds no jurisdictional basis to consider the above request from Claimant regarding her FAP supplement. While the Department apparently agreed to take actions to supplement Claimant's FAP benefits, this was done so on their own accord. Claimant withdrew her hearing request and, therefore, the hearing request filed on June 18, 2014,

is well beyond 90 days of the original case action. Further, Claimant has not demonstrated an action resulting in suspension, reduction, discontinuance, or termination of assistance. Therefore, Claimant's hearing request regarding August 2013 FAP benefits is **DISMISSED** for lack of jurisdiction.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the closure of Claimant's FAP benefits based upon ineligible student status and **DISMISSED IN PART** with respect to Claimant's FAP supplement for August 2013.



Jonathan W. Owens
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **8/19/2014**

Date Mailed: **8/20/2014**

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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]
[REDACTED]