

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

IN THE MATTER OF:

██████████
████████████████████
████████████████████

Reg. No.: 2014-16986
Issue No(s): 3009
Case No.: ██████████
Hearing Date: January 9, 2014
County: Wayne (18)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 January 9, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Eligibility Specialist.

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) benefits effective December 1, 2013, ongoing?

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. See Exhibit 1.
2. On ██████████ Claimant had a felony warrant issued for him. See Exhibit 1.
3. On November 12, 2013, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits would close effective December 1, 2013, ongoing, due to the criminal justice disqualification. See Exhibit 1.
4. On November 13, 2013, Claimant was no longer subject to an outstanding felony warrant. See Exhibit 1.

5. On December 9, 2013, Claimant filed a hearing request, protesting his FAP case closure. See Exhibit 1.

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.

Fugitive felons are not eligible for assistance. BEM 204 (July 2013), p. 1. A fugitive felon is a person who is subject to arrest under an outstanding warrant arising from a felony charge against that person (this includes persons charged with felony welfare fraud who fail to appear in court). BEM 204, p. 1.

The Department can document a fugitive felon when a written statement is obtained from a law enforcement official, prosecuting attorney or Office of Inspector General (OIG) identifies an individual as a fugitive felon and locating or apprehending the individual is within the officer's official duties. BEM 204, p. 1.

The Department will disqualify the individual as a fugitive felon as long as he or she is subject to arrest under an outstanding warrant. BEM 204, p. 1.

In this case, Claimant was an ongoing recipient of FAP benefits. See Exhibit 1. On January 2, 2014, the Department presented a written statement from the OIG, which indicated that the Claimant had a felony warrant issued for him on [REDACTED]. See Exhibit 1. Due to the outstanding felony warrant, on November 12, 2013, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits would close effective December 1, 2013, ongoing, due to the criminal justice disqualification. See Exhibit 1. However, the OIG letter indicated that on November 13, 2013, Claimant was no longer subject to an outstanding felony warrant. See Exhibit 1.

At the hearing, Claimant did not dispute the felony warrant information. On or around November 13, 2013, Claimant testified that he did turn himself in at the issuing agency for the felony warrant. Then, Claimant testified that his felony charges were dropped and he pleaded guilty to misdemeanor charges. Claimant provided as an exhibit a Settlement Offer and Notice of Acceptance of him agreeing to reduced charges on [REDACTED]. See Exhibit A.

A negative action is a Department action to deny an application or to reduce, suspend or terminate a benefit. BAM 220 (July 2013) p. 1. The negative action date is the day after the timely hearing request date on the Department's notice of case action. BAM 220, p. 11. The timely hearing request date is the last date on which a client can request a hearing and have benefits continued or restored pending the hearing. BAM 220, p. 11. It is always the day before the negative action is effective. BAM 220, p. 11. A pending negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. BAM 220, p. 11. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, pp. 11-12.

If the requirement is met before the negative action effective date, then the Department will enter the information the client provided to meet the requirement that caused the negative action. BAM 220, p. 12. The Department will then delete the negative action by reactivating the program and run eligibility and certify the results. BAM 220, pp. 12-13. The Department will recalculate benefits based on the information and dates entered in the system. BAM 220, p. 13.

In the present case, Claimant's Request for a Hearing (Exhibit 1) stated that Claimant can submit a timely hearing request on or before November 25, 2013. BAM 220, p. 11. Thus, November 26, 2013, is the negative action date, which is the date after the timely hearing request date. BAM 220, p. 11. There was credible evidence provided by both the Department and Claimant that he was no longer subject to an outstanding felony warrant as of November 13, 2013. See Exhibit 1 and A. Even though the OIG letter is dated January 2, 2014, it indicated that the outstanding felony warrant ended on November 13, 2013. See Exhibit 1.

Based on the foregoing information and evidence, Claimant met the requirement before the November 26, 2013 negative action effect date. BAM 220, p. 12. Based on the Notice of Case Action and because the Claimant was no longer subject to an outstanding felony warrant before the November 26, 2013 negative action date, the Department improperly closed Claimant's FAP benefits effective December 1, 2013, ongoing. The Department should have deleted the negative action and run his FAP eligibility. See BAM 220, pp. 12-13.

DECISION AND ORDER

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 improperly closed Claimant's FAP benefits effective December 1, 2013, ongoing.

Accordingly, the Department's FAP 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 as of December 1, 2013, ongoing;
2. Begin recalculating the FAP budget for December 1, 2013, ongoing, in accordance with Department policy;
3. Issue supplements to Claimant for any FAP benefits he was eligible to receive but did not from December 1, 2013, ongoing; and
4. Notify Claimant in writing of its FAP decision in accordance with Department policy.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 14, 2014

Date Mailed: January 14, 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.

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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

EJF/cl

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