

**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.: 2014-8677
Issue No.: 3019
Case No.: ██████████
Hearing Date: November 25, 2013
County: Wayne (49)

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 November 25, 2013, 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.

ISSUES

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

Did the Department properly deny Claimant's FAP application effective September 23, 2013?

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. On July 16, 2013, the Department sent Claimant a redetermination, which was due back by August 1, 2013. See Exhibit 1.
3. On July 31, 2013, Claimant submitted the redetermination. See Exhibit 1.

4. On August 14, 2013, the Department sent Claimant a Verification Checklist (VCL), which requested verification of the checking account and was due back by August 26, 2013. See Exhibit 1.
5. Claimant did not submit the verifications timely.
6. On August 28, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits would close effective September 1, 2013, ongoing, due to her failure to comply with the verification requirements. See Exhibit 1.
7. On September 4, 2013, the Department received verification of the checking account from the Claimant. See Exhibit 1.
8. On September 23, 2013, Claimant reapplied for FAP benefits.
9. On October 11, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP application was denied effective September 23, 2013, ongoing, due to excess assets. Exhibit 1.
10. On October 23, 2013, Claimant filed a hearing request, protesting the FAP case closure and denial. 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.

A complete redetermination is required at least every 12 months. BAM 210 (July 2013), p. 1. For FAP cases, benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. BAM 210, p. 2. A redetermination/review packet is considered complete when all of the sections of the redetermination form including the signature section are completed. BAM 210, p. 10. If the redetermination packet is not logged in by the last working day of the redetermination month, the Department automatically closes the EDG. BAM 210, p. 10. A DHS-1605 is not generated. BAM 210, p. 10.

For FAP cases, verifications must be provided by the end of the current benefit period or within 10 days after they are requested, whichever allows more time. BAM 210, p.

14. The group loses its right to uninterrupted FAP benefits if it fails to submit verifications timely, provided the requested submittal date is after the timely filing date. BAM 210, p. 17.

The Department sends a negative action notice when: the client indicates refusal to provide a verification, or the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130 (July 2013), p. 6.

In this case, Claimant was an ongoing recipient of FAP benefits. On July 16, 2013, the Department sent Claimant a redetermination, which was due back by August 1, 2013. See Exhibit 1. On July 31, 2013, Claimant submitted the redetermination. See Exhibit 1. On August 14, 2013, the Department sent Claimant a VCL, which requested verification of the checking account and was due back by August 26, 2013. See Exhibit 1. Claimant did not submit the verification timely. Thus, on August 28, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits would close effective September 1, 2013, ongoing, due to her failure to comply with the verification requirements. See Exhibit 1. However, on September 4, 2013, the Department received verification of the checking account from the Claimant. See Exhibit 1.

Based on the foregoing information and evidence, the Department properly closed Claimant's FAP benefits effective September 1, 2013, in accordance with Department policy. For FAP cases, verifications must be provided by the end of the current benefit period or within 10 days after they are requested, whichever allows more time. BAM 210, p. 14. Claimant failed to submit the verifications by the end of the benefit period, which was August 31, 2013. BAM 210, p. 14. Thus, the Department properly closed her FAP benefits effective September 1, 2013, due to her failure to comply with the verification requirements.

However, if a client files an application for redetermination before the end of the benefit period, but fails to take a required action, the case is denied at the end of the benefit period. BAM 210, p. 18. The Department proceeds as follows if the client takes the required action within 30 days after the end of the benefit period: re-register the redetermination application using the date the client completed the process and if the client is eligible, prorate benefits from the date the redetermination application was registered. BAM 210, p. 18.

In this case, the FAP benefits were denied at the end of the benefit period because Claimant failed to take a required action, which was submitting the verifications. However, on September 4, 2013, Claimant returned the required verifications. Thus, the Department should have re-registered the original redetermination application with the September 4, 2013 date and determine her eligibility. See BAM 210, pp. 17-18. Claimant met her required action within 30 days after the end of the benefit period. See BAM 210, pp. 17-18. The Department will determine her FAP eligibility from September 4, 2013, ongoing.

It should also be noted that Claimant requested a hearing disputing her FAP application denial. See Exhibit 1. On September 23, 2013, Claimant reapplied for FAP benefits. On October 11, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP application was denied effective September 23, 2013, ongoing, due to excess assets. Exhibit 1.

The Department tells the client what verification is required, how to obtain it, and the due date. BAM 130, p. 3. The Department uses the DHS-3503, Verification Checklist (VCL), to request verification. BAM 130, p. 3.

For FAP cases, the asset limit is \$5,000 or less. BEM 400 (October 2013), p. 5. For non-categorically eligible groups it is \$5,000 or less for SDV groups who have income over 200 percent of the poverty level and certain disqualified household members. BEM 400, p. 5.

For FAP cases, an asset must be available to be countable. BEM 400, p. 9. Available means that someone in the asset group has the legal right to use or dispose of the asset. BEM 400, p. 9. However, this does not apply to trusts. BEM 400, p. 9. There are special rules about trusts. BEM 400, p. 9. For FAP trust policy, the trust principal and any income retained by the trust are considered unavailable if all conditions are met as listed in BEM 400. BEM 400, p. 26.

In this case, the Department presented Claimant's submitted verification, which was an account summary page. See Exhibit 1. This document indicated that Claimant's daughter had a special needs trust, in which the Claimant was the trustee. See Exhibit 1. The Department testified that it denied the application based on this submitted documentation and it did not request any further verification of the trust to determine if it is a countable asset.

Based on the foregoing information and evidence, the Department improperly denied Claimant's FAP application effective September 23, 2013. As stated in the above policy, the Department should have requested additional information to determine if Claimant's daughter's trust is a countable asset. BAM 130, p. 3. The Department will request verification of the trust and determine if it is a countable asset. Because Claimant submitted the banking documentation on September 4, 2013, the Department will request such verification and determine her FAP eligibility from that date.


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 (i) acted in accordance with Department policy when properly closed Claimant's FAP benefits effective September 1, 2013; (ii) it did not act in accordance with Department policy when it failed to re-register Claimant's original redetermination application with the September 4, 2013 date; and (iii) it improperly denied Claimant's FAP application effective September 23, 2013.

Accordingly, the Department's FAP decision is AFFIRMED IN PART with respect to closure effective September 1, 2013 and REVERSED IN PART with respect to re-registering the original redetermination application with the September 4, 2013 date and improperly denying the application effective September 23, 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. Re-register the original redetermination application with the September 4, 2013 date;
2. Initiate verification of the trust to determine if it is a countable asset in accordance with Department policy;
3. Begin reprocessing the original redetermination application/recalculating the FAP budget for September 4, 2013, ongoing, in accordance with Department policy;
4. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from September 4, 2013, ongoing; and
5. 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: December 3, 2013

Date Mailed: December 3, 2013

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

EJF/cl

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