

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

IN THE MATTER OF:

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

Reg. No.: 15-001027
Issue No.: 3000; 3008
Case No.: ██████████
Hearing Date: February 19, 2015
County: WAYNE-DISTRICT 15
(GREYDALE)

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 February 19, 2015, 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 calculate Claimant's Food Assistance Program (FAP) allotment effective September 1, 2014, 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 is an ongoing recipient of FAP benefits. See Exhibit 1, pp. 6-7.
2. For August 2014, Claimant received \$189 in FAP benefits; however, Claimant's FAP benefits decreased to \$15 for September 2014. See Exhibit 1, p. 6
3. On August 21, 2014, the Department sent Claimant a Notice of Case Action notifying him that he was approved for FAP benefits effective September 1, 2014, ongoing for \$15. See Exhibit 1, pp. 19-20.
4. For October 2014, ongoing, Claimant received \$16 in monthly FAP benefits. See Exhibit 1, p. 6.

5. On October 15, 2014, Claimant submitted verification of his shelter expenses, which indicated his monthly rental payments were \$450. See Exhibit 1, pp. 9-16 and 21.
6. On December 19, 2014, Claimant filed a hearing request, protesting his FAP allotment. See Exhibit 1, pp. 2-5.

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.

Preliminary matter

On August 21, 2014, the Department sent Claimant a Notice of Case Action notifying him that he was approved for FAP benefits effective September 1, 2014, ongoing for \$15. See Exhibit 1, pp. 19-20. On December 19, 2014, Claimant filed a hearing request, protesting his FAP allotment. See Exhibit 1, pp. 2-5. During the hearing, Claimant testified that he disputed the decrease in his FAP benefits, which was effective September 1, 2014, ongoing.

Additionally, the Notice of Case Action was addressed to Claimant's previous address. However, Claimant testified that he never received the notice dated August 21, 2014. Claimant testified that was the proper mailing address in August 2014. Claimant testified that he was homeless the first week of August 2014; however, he testified that he did not notify the Department that he was homeless until September 2014.

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 BAM 600 (July 2014), p. 6, 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.]

Based on the above information and evidence, this Administrative Law Judge (ALJ) lacks the jurisdiction to address Claimant's FAP dispute for September 2014.

First, it is found that the Claimant did not rebut the presumption of proper mailing. The proper mailing and addressing of a letter creates a presumption of receipt which may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976). The evidence presented that the Notice of Case Action was properly addressed to Claimant at the time the notice was generated. Moreover, Claimant failed to inform the Department that he was homeless until after the Notice of Case Action was generated.

Second, the Department's Notice of Case Action to Claimant was dated August 21, 2014. See Exhibit 1, pp. 19-20. However, Claimant did not file a request for hearing to contest the Department's action until December 19, 2014. See Exhibit 1, pp. 2-5. Claimant's hearing request was not timely filed within ninety days of the Notice of Case Action and therefore, this ALJ lacks the jurisdiction to address his FAP benefits for September 2014. See BAM 600, pp. 4-6. However, Claimant's hearing request was submitted in December 2014. See Exhibit 1, pp. 2-5. The Michigan Administrative Hearing System (MAHS) may grant for FAP only, a hearing regarding the current level of benefits or denial of expedited service. See BAM 600 (July and October of 2014) pp. 4-5. As such, this ALJ will address whether the Department properly calculated Claimant's FAP benefits effective October 1, 2014, ongoing. See BAM 600, pp. 4-5.

FAP benefits

For October 2014, ongoing, Claimant received \$16 in monthly FAP benefits. See Exhibit 1, p. 6. Claimant requested the hearing to dispute his FAP allotment. However, the Department failed to present any of Claimant's FAP budgets for October 1, 2014, ongoing. The Department presented Claimant's Notice of Case Action, which provided a budget summary for the period of September 1, 2014, to August 31, 2016. See Exhibit 1, pp. 19-20. But, Claimant's FAP benefits increased to \$16 effective October 1, 2014. Even though it was only a one dollar increase, this ALJ needs Claimant's FAP budgets to determine if the Department properly calculated his allotment in accordance

with Department policy. For example, on October 15, 2014, Claimant submitted verification of his shelter expenses, which indicated his monthly rental payments were \$450. See Exhibit 1, pp. 9-16 and 21. This ALJ would need to review Claimant's FAP budgets to determine if the Department properly applied Claimant's housing costs of \$450.

The local office and client or Authorized Hearing Representative (AHR) will each present their position to the ALJ, who will determine whether the actions taken by the local office are correct according to fact, law, policy and procedure. BAM 600 (January 2015), p. 35. Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. BAM 600, p. 35. The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600, p. 37.

Based on the foregoing information and evidence, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Claimant's FAP benefits effective October 1, 2014, ongoing. See BAM 600, pp. 35-37. The Department failed to present Claimant's FAP budgets for the benefit period of October 1, 2014, ongoing, in order to determine if the Department properly calculated Claimant's FAP benefits. As such, the Department failed its burden to show that it properly calculated Claimant's FAP benefits effective October 1, 2014, ongoing.

DECISION AND ORDER


The Administrative Law Judge (ALJ), based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the (i) Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it calculated Claimant's FAP benefits effective October 1, 2014, ongoing; and (ii) this ALJ lacks the jurisdiction to address Claimant's FAP benefits/allotment for the period of September 1, 2014 to September 30, 2014.

Accordingly, the Department's FAP decision is AFFIRMED IN PART with respect to September 2014 for lack of jurisdiction and REVERSED IN PART with respect to October 1, 2014, ongoing.

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. Recalculate the FAP budget for October 1, 2014, ongoing, in accordance with Department policy;

2. Issue supplements to Claimant for any FAP benefits he was eligible to receive but did not from October 1, 2014, ongoing; and
3. Notify Claimant of its FAP decision in accordance with Department policy.


Eric Feldman
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/25/2015**

Date Mailed: **2/25/2015**

EJF / cl

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 48909-8139

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