

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-012714
Issue No.: 3000
Agency Case No.: [REDACTED]
Hearing Date: November 4, 2015
County: Wayne (17)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner'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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on November 4, 2015, from Detroit, Michigan. Petitioner appeared and was unrepresented. [REDACTED], Petitioner's daughter, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED], manager.

ISSUE

The first issue is whether a hearing may be granted in response to Petitioner's request seeking a new assigned specialist.

The second issue is whether Petitioner timely requested a hearing to dispute a termination of FAP eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner was an ongoing FAP recipient.
2. On January 25, 2015, MDHHS terminated Petitioner's FAP eligibility, effective March 2015, and mailed a written notice.
3. On July 15, 2015, Petitioner requested a hearing to dispute a termination of FAP eligibility, effective March 2015; Petitioner also requested a hearing to request a new specialist.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. MDHHS (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner requested a hearing, in part, to request a new specialist. Petitioner testimony alleged that her specialist committed many eligibility errors in the past. Petitioner further alleged her specialist spoke very disrespectfully.

The Michigan Administrative Hearing System may grant a hearing about any of the following (see BAM 600 (June 2015), p. 4):

- denial of an application and/or supplemental payments;
- reduction in the amount of program benefits or service;
- suspension or termination of program benefits or service
- restrictions under which benefits or services are provided;
- delay of any action beyond standards of promptness; or
- the current level of benefits or denial of expedited service (for Food Assistance Program benefits only).

Petitioner's desire for a new specialist is not a basis for which a hearing may be granted. Though it is appreciated that Petitioner alleged many difficulties with her current specialist, MDHHS cannot be administratively ordered to change specialists. Petitioner's hearing request will be dismissed concerning her preference of specialist.

Petitioner requested a hearing, in part, to dispute a termination of FAP benefits from February 2015. Petitioner contended she never received written notice of closure. In response, MDHHS presented a Notice of Case Action (Exhibits 1-2), dated January 21, 2015. The notice indicated Petitioner's FAP eligibility was to close beginning March 2015 (presumably, Petitioner received FAP benefits in February 2015). It was not disputed that the notice had Petitioner's proper mailing address.

Petitioner suggested that she might not have received the written notice because her specialist purposely did not mail it. In response, MDHHS presented a document listing the correspondence sent to Petitioner (Exhibit 3). Petitioner's correspondence history listed that the NCA informing Petitioner of FAP closure was sent though "central-print". "Central-print" is understood to be a computer-generated mailing which cannot be interrupted by a specialist.

The proper mailing and addressing of a letter creates a presumption of receipt. That presumption 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). MDHHS presented persuasive evidence that written notice of FAP closure was mailed to Petitioner. Petitioner's testimony that she did not receive the written notice was sincere, but insufficient to rebut the presumption of receipt. It is found that Petitioner received the written notice of FAP closure dated January 21, 2015.

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (1/2015), p. 6. The request must be received in the local office within the 90 days. *Id.*

Petitioner requested a hearing on July 15, 2015. Petitioner's daughter testified she and her mother were not "twiddling our thumbs" and that Petitioner made many attempts to contact her worker. Petitioner's testimony was again sincere, but it does not alter the fact that approximately 175 days elapsed before a hearing was requested. MDHHS does not allow good cause to excuse a tardy hearing request. It is found that Petitioner failed to timely request a hearing to dispute FAP eligibility from February 2015. Accordingly, Petitioner's hearing request is appropriately dismissed.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that a hearing may not be granted for the purpose of requesting a change in assigned MDHHS specialist. It is further found that Petitioner did not timely request a hearing to dispute a termination of FAP benefits, effective February 2015. Petitioner's hearing request is **DISMISSED**.



Christian Gardocki

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Signed: **11/5/2015**

Date Mailed: **11/5/2015**

CG/tm

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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:

