

**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.: 15-016388
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: October 27, 2015
County: INGHAM

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on October 27, 2015, from Lansing, Michigan. Participants on behalf of Claimant included herself and her Attorney [REDACTED] of [REDACTED] higan. Participants on behalf of the Department of Health and Human Services (Department) included Hearing Facilitator [REDACTED] and Assistant Attorney General [REDACTED]. Spanish translation services were provided by DHHS employee [REDACTED].

ISSUE

Did the Department properly determine Claimant's Food Assistance Program (FAP) eligibility on June 24, 2015?

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 November 15, 2014, Claimant was sent a Notice of Case Action (DHHS-1605) which stated her Food Assistance Program (FAP) benefits were decreased to \$ [REDACTED] per month beginning December 1, 2014. (Department's Exhibit Pages 10-13) Page 3 of the Notice of Case Action (DHHS-1605) (Department's Exhibit Page 12) states "DHS must receive your request for appeal within 90 days of the mailing day of this notice. Your request must be received on or before 02/13/2015 or you will not be granted a hearing."
2. On December 6, 2014, Claimant was sent a Notice of Case Action (DHHS-1605) which stated her Food Assistance Program (FAP) benefits

were decreased to \$█ per month beginning January 1, 2015. (Department's Exhibit Pages 16-19) Page 3 of the Notice of Case Action (DHHS-1605) (Department's Exhibit Page 18) states "DHS must receive your request for appeal within 90 days of the mailing day of this notice. Your request must be received on or before 03/06/2015 or you will not be granted a hearing."

3. On May 29, 2015, Claimant submitted a Mid-Certification Contact Notice (DHS-2240-A). (Department's Exhibit Pages 22-24) The only change Claimant reported was an increase in her rent.
4. On June 24, 2015, Claimant was sent a Notice of Case Action (DHHS-1605) which stated her Food Assistance Program (FAP) benefits were decreased to \$16 per month beginning August 1, 2015. (Department's Exhibit Pages 32-35)
5. On September 8, 2015, Claimant submitted a hearing request. (Department's Exhibit Pages 1-7) The request specifies that a hearing is sought from the June 24, 2015 Notice of Case Action lowering her Food Assistance Program (FAP) to \$█ (Department's Exhibit Page 3) The request also contained a 2014 Michigan Home Heating Credit Claim which Claimant signed on August 19, 2015. (Department's Exhibit Pages 6 & 7)
6. On September 12, 2015, Claimant was sent a Notice of Case Action (DHHS-1605) which stated her Food Assistance Program (FAP) benefits were changing to \$127 per month beginning October 1, 2015.
7. On September 17, 2015, Claimant was sent a Notice of Case Action (DHHS-1605) which stated her Food Assistance Program (FAP) benefits were changing to \$█ per month beginning October 1, 2015.
8. On October 15, 2015, Attorney █ submitted a 46 page written argument that includes 5 attachments.
9. On October 27, 2015, Attorney █ submitted a 3 page addendum to her written argument. The addendum states that Claimant is amending her hearing request "to request a hearing from the notice of hearing dated November 15, 2014".

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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. The Department (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.

Claimant seeks a hearing on three separate notices of case action. There are separate jurisdictional issues with regard to each one. Each of the three separate notices will be addressed in turn.

November 15, 2014 Notice of Case Action

Bridges Administration Manual (BAM) 600 Hearings contains the Department's policies for this Administrative Law Hearing. Page 6 of BAM 600 states: "the client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing."

On October 27, 2015, Claimant requested a hearing on the November 15, 2014 Notice of Case Action under the guise of amending a September 8, 2015 hearing request. In accordance with BAM 600, and as stated on the November 15, 2014 Notice of Case Action, a hearing request had to be received on or before 02/13/2015 in order for a hearing to be granted.

Claimant asserts that the November 15, 2014 Notice of Case Action was deficient in providing her with proper notice of why her Food Assistance Program (FAP) benefits were being reduced. On that basis, Claimant asserts the Department should waive the untimeliness of the hearing request and should be allowed benefits retroactively. The Department did not unilaterally take the action Claimant desires.

Claimant correctly identified that the Letter of Authority from the Director of the DHHS states that Administrative Law Judges conducting Administrative Law Hearings on Department eligibility determinations have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Claimant also anticipated difficulty with the relief she seeks because administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940); *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542, 303 NW2d 35 (1981); *Delke v Scheuren*, 185 Mich App 326, 460 NW2d 324 (1990), and *Turner v Ford Motor Company*, unpublished opinion per curiam of the Court of Appeals issued March 20, 2001 (Docket No. 223082).

Claimant further requested that this Administrative Law Judge submit a recommended decision to the Department and allow the Director to make the final decision. BAM 600, at pages 37 & 38 provides:

HEARING DECISIONS

All Programs

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. The ALJ issues a final decision **unless**:

The ALJ believes that the applicable law does **not** support DHS policy.

DHS policy is silent on the issue being considered.

In that case, the ALJ recommends a decision and the policy hearing authority makes the final decision.

A recommended decision is not in order because there is no statutory basis for the relief Claimant seeks and DHHS policy is not silent on the issue. The issues Claimant raised have been preserved for appeal.

December 6, 2014 Notice of Case Action

Attachment A of Claimant's written argument is a hearing request for the December 6, 2014 Notice of Case Action. The request was signed by Claimant on August 3, 2015. In accordance with BAM 600, and as stated on the December 6, 2014 Notice of Case Action, a hearing request had to be received on or before 03/06/2015 in order for a hearing to be granted.

During this hearing Claimant testified that she did not understand the December 6, 2014 Notice of Case Action. Claimant went on to testify that her daughter translated the notice for her and then her daughter called and spoke to the DHS case worker. Claimant testified that her daughter told her the FAP was reduced because she (Claimant) did not pay for her heating. Claimant also testified that a friend explained to her (Claimant) about requesting a hearing but she (Claimant) figured the Department was correct and did not request a hearing.

A majority of Claimant's testimony consisted of hearsay about the asserted conversation between Claimant's daughter and the DHS case worker. S. Bouck asserted that the conversation between Claimant's daughter and the DHS case worker should be considered a verbal request for hearing on the December 6, 2014 Notice of Case Action. Admission of evidence during an Administrative Law Hearing on Department of Health and Human Services' matters is not strictly governed by the Michigan Rules of Evidence. In accordance with the Michigan Administrative

Procedures Act, an Administrative Law Judge may admit and give probative effect to any evidence. However, the final decision and order must be supported by and in accordance with competent, material, and substantial evidence. There is no competent evidence in this record to support a conclusion that a verbal request for hearing was made within 90 days of the December 6, 2014 Notice of Case Action.

The jurisdictional limitations described regarding the November 15, 2014 Notice of Case Action above, are applicable here as well. Claimant further requested that this Administrative Law Judge submit a recommended decision to the Department and allow the Director to make the final decision. A recommended decision is not in order because there is no statutory basis for the relief Claimant seeks and DHHS policy is not silent on the issue. The issues Claimant raised have been preserved for appeal.

June 24, 2015 Notice of Case Action

Jurisdiction exists to review the June 24, 2015, Notice of Case Action because this hearing requested was submitted on September 8, 2015. September 8, 2015 is within the required 90 calendar day time limit of BAM 600. The Department representative testified that the June 24, 2015 Food Assistance Program (FAP) eligibility determination was incorrect due to a data entry error. Review of the Food Assistance Program (FAP) financial eligibility budget and income source evidence shows that Claimant's Supplemental Security Income (SSI) amount was incorrectly entered.

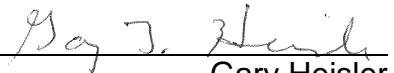
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it determined Claimant's Food Assistance Program (FAP) eligibility on June 24, 2015.

DECISION AND ORDER

Accordingly, the Department's June 24, 2015, Food Assistance Program (FAP) eligibility determination 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. Correct the June 24, 2015, Food Assistance Program (FAP) financial eligibility budget and determine Claimant's eligibility in accordance with Department policy from August 1, 2015 ongoing.
2. Supplement Claimant any Food Assistance Program (FAP) benefits she was eligible for but did not receive due to this incorrect action.



Gary Heisler

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

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

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

GFH / 

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:

