

**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.: 15-020639
Issue No.: 3001
Agency Case No.: [REDACTED]
Hearing Date: December 21, 2015
County: MACOMB-DISTRICT 20
(WARREN)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 December 21, 2015, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by Joann Carpenter, Eligibility Specialist.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case for failure to verify residence?

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 recipient of FAP benefits.
2. From [REDACTED], Petitioner used her Michigan-issued FAP benefits out of state.
3. As a result of a front end eligibility (FEE) investigation concerning Petitioner's residency, the Department sent Petitioner a Verification Checklist (VCL) on [REDACTED] requesting that, in connection with her ongoing FAP eligibility, she verify her home address by submitting a lease agreement, utility bills, and a copy of her driver's license (front and back) by [REDACTED] (Exhibit B).

4. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP case would close effective [REDACTED] because verification of household was not returned.
5. On [REDACTED], the Department received Petitioner's timely request for hearing disputing the Department's actions.

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.

Petitioner disputed the closure of her FAP case. The Department testified that the case was closed because Petitioner failed to verify her continued residency in Michigan. In order to be eligible for FAP benefits, a person must be a Michigan resident. BEM 220 (July 2014), p. 1. A person is considered a resident while living in Michigan for any purpose other than a vacation even if there is no intent to remain in the state permanently or indefinitely. BEM 220, p. 1.

The Department testified that, because a FEE investigation showed that Petitioner had used her Michigan-issued FAP benefits exclusively out of state from [REDACTED] to [REDACTED], it sent Petitioner a VCL requesting verification of her residency by submitting a lease, her driver's license, and a utility bill by [REDACTED]. When she did not respond by the due date, the Department sent the [REDACTED], Notice of Case Action notifying Petitioner that her FAP case would close effective [REDACTED].

At the hearing, Petitioner testified that she continued to reside in Michigan at the home she had lived in since 2009/2010 that served as her address of record with the Department since her move. She explained that she had gone to visit her daughter out of state several times between [REDACTED] and [REDACTED] and used her FAP benefits while she was there because she had sufficient food at home in Michigan and her mother had purchased some meals for her while she was in Michigan. The Department admitted that Petitioner turned in a copy of a utility bill and her driver's

license, both showing her name and the Michigan address she had on record with the Department, on [REDACTED]. This evidence was sufficient to support Petitioner's claim that she continued to reside in Michigan.

The Department argues that it also needed Petitioner's lease to verify her address and residency because the driver's license could show an old address and because the utility bill, despite showing Petitioner's name as the responsible party, could be paid by Petitioner's daughter, who it believed continued to live in the home identified by Petitioner as her home. The Department is required to use a particular verification source if it is the most reliable; otherwise, it must use the one easiest to obtain. BAM 130(July 2015), p. 6.

In this case, Petitioner testified that she did not submit her lease because she had previously submitted it to the Department when she first moved to her residence in 2009 or 2010 and because she could not find it to submit in response to the VCL. Because the Department had a copy of Petitioner's lease, it was unnecessary to request another copy. Moreover, a current utility bill tying Petitioner to the address of record would be a more reliable source than the lease. It is further noted that the SOLQ, which the Department can access, shows that the address reported by Petitioner to the Social Security Administration is also her Michigan address of record with the Department (Exhibit D). If the Department was truly concerned that Petitioner was no longer at the Michigan address identified on her driver's license, utility bill, and SOLQ, it could have requested that her landlord complete a shelter verification form or that Petitioner submit current cancelled checks or receipts showing rent paid, the address, the landlord, and the person paying the expense, either source which would have more accurately identified her current living situation. See BEM 545 (October 2015), p. 14.

Because Petitioner submitted verifications sufficient to establish that she continued to live in Michigan on [REDACTED], which is within the negative action period of the [REDACTED] date the Notice of Case Action was sent to her notifying her of the closure of her case, the Department did not act in accordance with Department policy when it failed to remove the negative action closing Petitioner's FAP case. BAM 205 (July 2014), p. 1; BAM 220 (October 2015), p. 13.

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 closed Petitioner's FAP case.

DECISION AND ORDER

Accordingly, the Department's 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 Petitioner's FAP case effective [REDACTED]; and
2. Issue supplements to Petitioner for FAP benefits she was eligible to receive but did not from [REDACTED] ongoing.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **12/23/2015**

Date Mailed: **12/23/2015**

ACE / hw

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:

