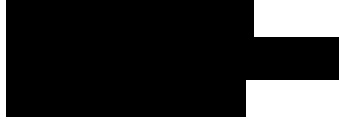


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 15-000443
Issue No.: FAP
Case No.: [REDACTED]
Hearing Date: February 10, 2015
County: GENESEE-DISTRICT 2

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 10, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly determine Claimant's Food Assistance Program (FAP) monthly allotment?

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 FAP recipient.
2. Claimant completed a DHS 1046 Semi Annual Contact form adding twins to the household composition.
3. On June 16, 2014, an interview was completed for the FAP case review.
4. The Department did not promptly approve additional FAP benefits for Claimant's larger group size because the children were still on an active FIP case with their father.
5. On June 19, 2014, a Notice of Case Action was issued to Claimant stating the FAP was approved with a monthly allotment of \$ [REDACTED] effective June 1, 2014.
6. On July 1, 2014, the Department received court documentation signed by the Attorney Referee June 12, 2014, ordering that Claimant would have physical custody of the children.

7. On August 6, 2014, Claimant's local Department office sent a fax to the local Department office for the children's father's case to remove the children from his active case.
8. In September 2014, additional emails were sent within the Department trying to have the children removed from the father's case.
9. Prior to November 5, 2014, Claimant filed a request for hearing contesting not receiving FAP benefits for the children.
10. On or about November 26, 2014, the children were removed from the father's case allowing for the increase to Claimant's FAP allotment effective December 2014.
11. On January 6, 2015, Claimant filed a request for hearing contesting not receiving retroactive FAP benefits to July 2014 because the children were not added to her case until December 2014.

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).

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.

The client or AHR has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received in the local office within the 90 days. BAM 600, 10-1-2014, p. 6.

This appeal began with Claimant's January 6, 2015 request for hearing. However, the Hearing Facilitator acknowledged that Claimant filed a prior hearing request. The date asserted in the hearing summary for when the prior hearing request was received, November 26, 2014, cannot be found credible because the Department's exhibits include a November 5, 2014, email, in part noting Claimant had already filed a hearing request. It does not appear that this prior hearing request was processed. Further, without being able to establish the date the prior hearing request was filed, it cannot be determined if it was timely filed to contest the June 19, 2014, Notice of Case Action.

Additionally, the evidence indicates Claimant's FAP benefits did not increase until December 2014 for the change reported in June 2014 and verified on July 1, 2014. There is no evidence that the Department issued a written notice of case action to Claimant for any determination regarding her FAP allotment after the change in her household composition was verified.

Accordingly, it appears that there is jurisdiction to review the FAP allotment retroactive to July 2014 as requested by Claimant because Claimant's claim for assistance for the additional household members was not acted upon with reasonable promptness and there was no evidence of a written notice of case action to start a 90 day time frame after the change in household composition was verified.

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.

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of necessary forms. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105, 4-1-2012, p. 6.

FAP group composition is addressed in BEM 212, 7-1-2014, pp. 1-13.

For FAP, the Department is to act on a change reported by means other than a tape match within 10 days of becoming aware of the change. Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. A supplemental issuance may be necessary in some cases. If necessary verification is not returned by the due date, take appropriate action based on what type of verification was requested. If verification is returned late, the increase must affect the month after verification is returned. BAM 220, 1-1-2014, pp. 6-7.

In this case, the evidence shows that Claimant timely reported the change in her household composition when she obtained physical custody of the children. Claimant reported the addition of the twins to the home on a Semi Annual Contact report and participated in an interview on June 16, 2014. On July 1, 2014, Claimant provided a copy of the court order verifying the change in physical custody. There was no evidence indicating this verification was not submitted timely, such as documentation of a request for the verification with a due date prior to July 1, 2014.

The Department has not presented sufficient evidence that they acted with reasonable promptness to correctly re-determined Claimant's FAP monthly allotment based on the change in household composition. While Claimant's local DHS office had the copy of the court order verifying the change in physical custody on July 1, 2014, it does not appear that they contacted the DHS office for the children's father's case until August 6,

2014. Even then, this change was not promptly processed. The evidence indicates the Department did not remove the children from the father's case until around November 26, 2014. This supports Claimant's assertion that her FAP benefits did not increase until December 2014.

The Hearing Facilitator indicated they recently learned that a recoupment could be sought from the father's case for the months he did not have the children, which would then allow a supplemental retroactive FAP payment to Claimant. The Hearing Facilitator indicated this action would be forthcoming.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Claimant's FAP monthly allotment.

DECISION AND ORDER

Accordingly, the Department's decision **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. Re-determine Claimant's FAP eligibility retroactive to July 2014 in accordance with Department policy.
2. Issue Claimant written notice of the determination in accordance with Department policy.
3. Issue Claimant any supplement she may thereafter be due.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/13/2015**

Date Mailed: **2/13/2015**

CL/hj

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:

