

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

IN THE MATTER OF:

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██████████

Reg. No.: 15-012290
Issue No.: 3004 5001
Case No.: ██████████
Hearing Date: August 31, 2015
County: Washtenaw (20)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 August 31, 2015, from Detroit, Michigan. Participants included the above-named Claimant. Participants on behalf of the Michigan Department of Health and Human Services (MDHHS) included ██████████, specialist, and ██████████ supervisor.

ISSUES

The first issue is whether MDHHS properly processed Claimant's State Emergency Relief application.

The second issue is whether MDHHS properly processed Claimant's Food Assistance Program (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. Claimant was an ongoing FAP recipient.
2. On October 10, 2014, Claimant applied for SER seeking ██████████ in relocation costs.
3. On an unspecified date, MDHHS approved Claimant's SER application for ██████████, subject to proof a Claimant copayment of ██████████ to be submitted by November 8, 2014.

4. By November 7, 2014, Claimant submitted to MDHHS verification of ██████ in payments and an additional ██████ commitment from a third party.
5. MDHHS failed to process Claimant's SER payment and Claimant requested a hearing over the MDHHS failure.
6. On an unspecified date before March 1, 2015, MDHHS mailed To Claimant written notice of FAP eligibility for January 2015 and February 2015.
7. On May 29, 2015, Claimant gave birth to two children.
8. On June 3, 2015, Claimant reported to MDHHS giving birth to two children.
9. On an unspecified date, MDHHS added Claimant's two children to her FAP eligibility, effective July 2015.
10. On July 9, 2015, Claimant requested a hearing to dispute the following: the MDHHS failure to approve a ██████ SER payment, an MDHHS failure to exclude employment income from FAP eligibility for January and February 2015, and an MDHHS failure to add Claimant's children to her FAP eligibility beginning June 2015.

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).

Claimant requested a hearing, in part, to dispute her FAP eligibility. Claimant testified she lost employment income in December 2014. Claimant further testified she reported the income loss to MDHHS in time to affect her FAP eligibility beginning January 2015. Claimant conceded that MDHHS adjusted her FAP eligibility beginning March 2015. Thus, Claimant only disputed her FAP eligibility for January 2015 and February 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 (4/2015), p. 6. The request must be received in the local office within the 90 days. *Id.*

Claimant requested a hearing on July 9, 2015. The date of written notice of Claimant's FAP eligibility for January 2015 and February 2015 was not established. In fairness to

MDHHS, Claimant did not specify the dispute in her hearing request; thus, MDHHS would have no reason to prepare for the dispute. It is presumed that the notice affecting Claimant's January 2015 and February 2015 eligibility would have been sent before March 1, 2015, at the very latest.

It is found that Claimant requested a hearing more than 90 days after written notice. Accordingly, Claimant's hearing request was untimely and her hearing request will be dismissed concerning this issue.

Claimant also requested a hearing to dispute an alleged MDHHS failure to timely process a group member change. Claimant gave birth to two children on May 29, 2015. MDHHS factored the children in Claimant's FAP eligibility beginning July 2015. Claimant contended that MDHHS should have affected her FAP eligibility for June 2015.

A member add that increases benefits is effective the month after it is reported or, if the new member left another group, the month after the member delete. BEM 550 (February 2014), p. 4. The date that Claimant reported to MDHHS the birth of her twins will dictate the proper FAP benefit month to be affected.

Claimant testified that she called left a telephone message for the testifying supervisor on May 29, 2015, which reported the birth of her children. Claimant brought no evidence of her alleged message. The testifying supervisor testified that she maintains a telephone log of all her messages. A check of the supervisor's log revealed no messages from Claimant on May 29, 2015. This evidence supported rejecting Claimant's testimony.

It was not disputed that Claimant reported the birth of her twins on June 3, 2015, via email. Claimant's email stated, in part "Emailing to let you know that I delivered my twins 6 weeks premature on May 29th. I need them added to my case."

Notably absent from Claimant's email is a reference to a previous reporting. If Claimant had called MDHHS a few days earlier, then a statement such as "This is my second reporting" would be expected. It is found that MDHHS properly recognized a reporting date of June 3, 2015, for the birth of Claimant's children. Accordingly, MDHHS properly did not factor Claimant's newborns in Claimant's FAP eligibility for June 2015.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by MDHHS (formerly known as the Family Independence Agency) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001 through R 400.7049. MDHHS policies are contained in the Services Emergency Relief Manual (ERM).

Claimant requested a hearing, in part, to dispute a MDHHS failure to process a conditional SER approval. It was not disputed that MDHHS was to pay ██████ subject to Claimant verifying proof of a payment of ██████ by November 8, 2014.

An administrative hearing decision dated March 31, 2015 (Exhibits 1-4), partially addressed the issue. The Hearing Decision found that MDHHS failed to justify non-payment and ordered MDHHS to request verification of Claimant's payments. In response, Claimant verified ██████ in actual payments on her rental payment history (see Exhibit 5). MDHHS did not count an additional \$800 in payments made on November 14, 2014, because the payments were made after November 8, 2014.

MDHHS conceded receiving proof of an ██████ payment commitment from a third party on November 7, 2014. MDHHS contended that a payment commitment may not substitute for a payment.

If the SER group meets all eligibility criteria but has a copayment, shortfall or contribution, MDHHS is to not issue payment until the client provides proof that their payment has been made or will be made by another agency. ERM 208 (October 2014), *Id.*, p. 4. Verification of payment must be received in the local office within the 30-day eligibility period or no SER payment will be made. *Id.* The client will then have to reapply. *Id.*

MDHHS has similar policy elsewhere. If another agency is making the payment, proof that payment will be made is required. ERM 103 (10/2013), p. 4.

The reference to a payment that "will be made" is persuasive language that MDHHS can accept a payment commitment from an agency as proof of payment. It is found that Claimant verified proof of ██████ in copayments before November 8, 2014. Accordingly, Claimant satisfied the SER conditional approval and it is found that MDHHS improperly failed to process the conditional SER approval.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant failed to timely request a hearing concerning her FAP eligibility from January 2015 and February 2015. Claimant's hearing request is **PARTIALLY DISMISSED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS properly did not include Claimant's recently birthed children in Claimant's FAP eligibility for June 2015. The actions taken by MDHHS are **PARTIALLY AFFIRMED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly failed to process payment for Claimant's SER application dated October 10, 2014. It is ordered that MDHHS process SER payment of [REDACTED] subject to the finding that Claimant timely submitted proof of copayment and/or payment commitment. The actions taken by MDHHS are **PARTIALLY REVERSED**.



Christian Gardocki

Administrative Law Judge
for Nick Lyon, Director

Department of Health and Human Services

Date Signed: **9/1/2015**

Date Mailed: **9/2/2015**

GC/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: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]