

**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.: 15-014674
Issue No.: 3001
Case No.: ██████████
Hearing Date: October 01, 2015
County: WAYNE-DISTRICT 76

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 1, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant. ██████████ also appeared as the Claimant's Authorized Hearing Representative. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Eligibility Specialist, and ██████████ Assistance Payments Supervisor and Hearing Facilitator also appeared.

ISSUE

Did the Department properly reduce the Claimant's Food Assistance (FAP) benefits?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant was an ongoing recipient of FAP benefits.
2. The Department issued a Verification Checklist (VCL) dated August 6, 2015 with a due date of August 17, 2015. The VCL requested that the Claimant return a completed shelter verification form, a print out of the past 3 months of prescription drugs from ██████████ and ██████████ totaling ██████████ and \$█████████ a month for July, June and May, 2015. Also, any payment for utilities, send in the bills. Exhibit 1.
3. The Claimant applied for FAP and MA benefits on June 23, 2015. Exhibit 2.

4. On July 25, 2015, the Department issued a Notice of Case Action which reduced the Claimant's FAP benefits to [REDACTED], effective September 1, 2015. Exhibit 7.
5. During the hearing the Department agreed to apply the [REDACTED] heat and utility allowance when calculating the Claimant's FAP benefits for September 2015.
6. The Department reduced the Claimant's FAP benefits effective September 1, 2015, due to the Department not receiving a response to the VCL by the due date. Exhibits 2 and 4.
7. The Claimant did not receive the VCL due to her mother intercepting the VCL and not providing the mail to her.
8. The Claimant has a group size of 3 and pays [REDACTED] and part of the heating bill.
9. A pre-hearing conference conducted on August 19, 2015, was attended by the Claimant's AHR, who provided medical bills and received a shelter verification form to be completed and returned by the Claimant.
10. The Claimant requested a hearing on August 5, 2015 protesting 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.

In this case, the Department sent the Claimant Verification Checklist requesting information to be returned by the due date of August 17, 2015. Exhibit 1. The information was not returned to the Department. The Claimant credibly testified that her mother has mental problems and intercepted the mail and never gave it to the Claimant. Normally, a letter such as the VCL properly mailed and addressed is presumed to be received unless rebutted by testimony of the party claiming non-receipt. 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). In this case, the Claimant's testimony that her mother intercepts her mail was credible and thus rebutted the presumption of receipt of the VCL, even though mailed to the correct address given to the Department. Thus because the VCL was not received, the Claimant had no opportunity to respond to it appropriately. Claimant was advised at the hearing that she must provide the Department with a mailing address, so the issues regarding her receipt of mail may be avoided. Also, given the Claimant's testimony regarding her problems with her mail, it is determined that the fact that the shelter verification was dated August 6, 2015 does not establish that the Claimant got the VCL. Exhibit 6.

The FAP for September 2015 did not include the Medicaid Part B premium, and medical bills provided at the pre hearing conference by Claimant's AHR prior to the FAP benefit reduction. The Budget also did not include correct rent. Exhibit 4. As the medical expenses were provided, the Department must consider the medical bills presented by the Claimant's AHR at the pre-hearing conference. The Claimant pays for drug expenses of [REDACTED] and incurs a monthly psychiatric treatment in the amount of [REDACTED]. The Claimant provided the Department with a several month history of her prescription expenses at the hearing.

The August FAP budget was correct as calculated based upon the information available to the Department at the time it was calculated. Even if the Claimant had received the VCL and completed it by the due date, the changes to the FAP budget would not have been effective until September 2015, as changes go into effect the month after they are reported. BAM 220, (October 1, 2015) p.7.

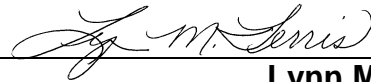
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it reduced the Claimant's FAP benefits for failing to return verification.

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. The Department shall recalculate the Claimant's FAP benefits for the month of September 2015 ongoing, and shall include the Claimant's ongoing Medicare Part B premium of \$ [REDACTED] and prescription expenses which are demonstrated by the verifications to be ongoing, and the heat and utility expense of [REDACTED] as well as rent of [REDACTED].
2. The Department shall issue a FAP supplement if the Claimant is otherwise eligible to receive same in accordance with Department policy.
3. The Department shall provide the Claimant and her AHR notice of its recalculation of the Claimant's FAP benefits.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **10/8/2015**

Date Mailed: **10/8/2015**

LMF/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]