

**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.: 15-017465
Issue No.: 3000; 3008
Agency Case No.: [REDACTED]
Hearing Date: November 23, 2015
County: WAYNE-DISTRICT 41

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 three-way telephone hearing was held on November 23, 2015, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUE

Did the Department properly decrease Petitioner's Food Assistance Program (FAP) benefits effective [REDACTED], ongoing?

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. On [REDACTED], the Department sent Petitioner a Quick Note notifying him that an electronic data match revealed that he has been convicted of two or more separate drug-related felonies on [REDACTED]; [REDACTED]; and [REDACTED]. See Exhibit A, p. 2.
3. Effective [REDACTED], Petitioner's FAP benefits decreased from \$357 (for a group size of two) to \$194 (for a group size of one) due to a criminal justice disqualification. See Exhibit B, pp. 1-6.

4. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. See Exhibit A, p. 5.
5. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying him that his FAP benefits would decrease from a group size of two to one effective [REDACTED], ongoing, due to Petitioner being convicted of at least two drug-related felonies since August 22, 1996. See Exhibit B, pp. 1-4.

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.

Preliminary matter

On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. See Exhibit A, p. 5. During the hearing, though, it was discovered that the Department did not send out the Notice of Case Action notifying him of his criminal justice disqualification (two drug-related felonies) until after his hearing request on [REDACTED]. See Exhibit B, pp. 1-4. As such, the undersigned lacks the jurisdiction to address Petitioner's criminal justice disqualification because the notice occurred subsequent to this hearing request. See BAM 600 (April 2015 and October 2015), pp. 1-6 and see BEM 230 (January 2015 and October 2015), pp. 1-4 (drug-related felony 2nd offense). Nevertheless, the undersigned will still address Petitioner's FAP decrease for September 2015 to October 2015 for the reasons discussed below.

FAP decrease

A positive action is a Michigan Department of Health & Human Services (MDHHS) action to approve an application or increase a benefit. BAM 220 (July 2015), p. 1. A negative action is a MDHHS action to deny an application or to reduce, suspend or terminate a benefit. BAM 220, p. 1.

Upon certification of eligibility results, the Department automatically notifies the client in writing of positive and negative actions by generating the appropriate notice of case action. BAM 220, p. 2. The notice of case action is printed and mailed centrally from the

consolidated print center. BAM 220, p. 2. There are two types of written notices: adequate and timely. BAM 220, p. 2. A notice of case action must specify the following:

- The action(s) being taken by the department.
- The reason(s) for the action.
- The specific manual item which cites the legal base for an action or the regulation or law itself.
- An explanation of the right to request a hearing.
- The conditions under which benefits are continued if a hearing is requested.

BAM 220, p. 2.

An adequate notice is a written notice sent to the client at the same time an action takes effect (not pending), such as approval/denial of an application or increase in benefits. See BAM 220, pp. 2-3. Timely notice is given for a negative action unless policy specifies adequate notice or no notice. BAM 220, p. 4. A timely notice is mailed at least 11 days before the intended negative action takes effect. BAM 220, p. 4. The action is pending to provide the client a chance to react to the proposed action. BAM 220, p. 4.

In the present case, Petitioner's FAP benefits decreased from \$357 (for a group size of two) to \$194 (for a group size of one) due to a criminal justice disqualification effective September 1, 2015. See Exhibit B, pp. 1-6. This is considered a negative action by the Department because it was a reduction in benefits. See BAM 220, p. 1. The Department should have sent Petitioner a Notice of Case Action informing him of the negative action (reduction of benefits) at least 11 days before the intended negative action takes effect. See BAM 220, p. 4. However, the Department failed to send such a notice at least 11 days before the intended negative action takes effect. In fact, the Department did not send out notice of the case closure until [REDACTED], which notified him that his benefits would decrease effective [REDACTED]. See Exhibit B, pp. 1-4. The Department obviously did not send out timely notice of Petitioner's FAP reduction in accordance with Department policy. See BAM 220, pp. 1-4. Because the Department failed to send Petitioner timely notice of his reduction in FAP benefits in accordance with Department policy, the Department improperly reduced his benefits for the time period of [REDACTED].

The undersigned is only addressing Petitioner's FAP benefits for the period of [REDACTED]. As stated above, the Department must send timely notice at least 11 days before the intended negative action takes effect. See BAM 220, p. 4. As of Petitioner's hearing request date of [REDACTED], the Department failed to send Petitioner timely notice of his reduction in FAP benefits for the benefit periods of September 2015 and October 2015. As such, this allows the undersigned jurisdiction to address his FAP benefits for the period of September 2015 and October 2015. See BAM 600, pp. 4-5 (The Michigan Administrative Hearing System (MAHS) may grant a hearing when there is a reduction in the amount of

program benefits or service, or for FAP only, the current level of benefits or denial of expedited service). The Department will reinstate Petitioner's benefits for September 2015 and October 2015 and issue him supplements for this timeframe. However, the undersigned lacks the jurisdiction to address Petitioner's FAP benefits from [REDACTED], ongoing, and cannot address the criminal justice disqualification as the notice occurred subsequent to the hearing request. Petitioner can request another hearing to dispute the Notice of Case Action dated [REDACTED] and his FAP benefits effective [REDACTED], ongoing. See BAM 600, pp. 1-6.

DECISION AND ORDER

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 (i) the Department did not act in accordance with Department policy when it improperly reduced Petitioner's FAP benefits from [REDACTED]; and (ii) the undersigned lacks the jurisdiction to address Petitioner's Notice of Case Action dated [REDACTED] and/or FAP benefits effective [REDACTED].

Accordingly, the Department's FAP 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. Reinstatement of Petitioner's FAP case as of [REDACTED] (for a group size of two);
2. Issue Petitioner FAP supplements he is eligible to receive from [REDACTED] (for a group size of two); and
3. Notify Petitioner of its decision.



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **11/23/2015**
Date Mailed: **11/23/2015**

EF / 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:

