

**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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████████████████████
████████████████

MAHS Reg. No.: 15-022587
Issue No.: 3001
Agency Case No.: ██████████
Hearing Date: January 20, 2016
County: Wayne-District 17
(Greenfield/Joy)

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 January 20, 2016, from Detroit, Michigan. Petitioner appeared and represented herself. The Department of Health and Human Services (Department) was represented by ██████████, Hearing Facilitator.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case effective August 1, 2015?

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 March 2, 2015, the Department sent Petitioner a semi-annual contact report requesting that she return the completed document to the Department by April 1, 2015 or her FAP case would close effective April 30, 2015 (Exhibit C).
3. On April 10, 2015, the Department sent Petitioner a Notice of Potential Food Assistance (FAP) Closure advising her that it had not received her semi-annual contact report and that her FAP case will close effective April 30, 2015 (Exhibit B).

4. On May 8, 2015, the Department received a completed semi-annual contact report from Petitioner.
5. The Department processed the semi-annual contact report and continued to issue FAP benefits to Petitioner in May 2015, June 2015, and July 2015.
6. Petitioner's FAP case closed effective August 1, 2015.
7. On November 30, 2015, the Department received Petitioner's request for hearing disputing the closure of her FAP case.

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. As a preliminary matter, the issue of the timeliness of Petitioner's hearing request was addressed. The Department contended that because Petitioner filed her hearing request on November 30, 2015, more than 90 days after it sent her the April 10, 2015 Potential Food Assistance (FAP) Closure notifying her that her FAP case would close effective April 30, 2015, her hearing request was untimely and should be dismissed. See BAM 600 (October 2015), p. 6. However, a discussion of the case at the hearing revealed that, despite the April 10, 2015 Notice notifying Petitioner that her FAP case would close effective April 30, 2015, the Department continued to issue FAP benefits to Petitioner for several months after April 2015. Under the circumstances presented, Petitioner's request for hearing was not tied to the April 10, 2015 notice. There was no evidence of any other notice of case action sent to Petitioner concerning her FAP case. Accordingly, the Department's argument that Petitioner's hearing request was untimely must fail. This hearing proceeded to address whether the Department closed Petitioner's FAP case in accordance with policy.

The Department acknowledged that Petitioner received FAP benefits in May, June and July 2015 but testified that her case closed effective July 31, 2015 because she had failed to timely submit a semi-annual contact report, DHS-1046. The Department sends

a semi-annual contact report to clients with countable earnings and a 12-month benefit period at the beginning of the fifth month of the benefit period. BAM 210 (October 2015), p. 9. Clients must submit the signed form, with all of the sections answered completely and required verifications returned. BAM 210, p. 9. If the DHS-1046 is not logged in by the tenth day of the sixth month, the Department must send the client a DHS-1046A, Potential Food Assistance (FAP) Closure, which explains that the client must return the DHS-1046 and all required verifications by the last day of the month or the case will close. BAM 210, p. 12. If the client fails to return a complete DHS-1046 by the last day of the sixth month, Bridges will automatically close the case. BAM 210, p. 12. If the completed DHS-1046 and verifications are returned by the last day of the sixth month, the Department must process the changes to ensure the client's benefits are available no later than 10 days after their normal issuance date in the seventh month of the benefit period. BAM 210, p. 12.

In this case, the Department testified that it did not receive the semi-annual contact report from Petitioner until May 8, 2015, and Petitioner was unable to provide any testimony or documentary evidence to dispute this. However, rather than close Petitioner's case, the Department processed the semi-annual contact report on May 12, 2015, found Petitioner eligible for FAP benefits, and continue to issue her a monthly FAP allotment. Subsequently, it concluded that the semi-annual was untimely and closed the case on July 31, 2015. No notice of case action was sent to Petitioner advising her of the July 31, 2015 case closure.

A FAP case closure is a negative action requiring that the Department mail the client notice of the action at least 11 days before the intended negative action takes effect in order to provide the client with an opportunity to react to the proposed action. BAM 220 (October 2015), pp. 2-5. In this case, the Department conceded that no notice was sent to Petitioner explaining the reason for the closure of her FAP case effective July 31, 2015. Thus, the Department failed to act in accordance with Department policy when it failed to timely notify Petitioner of the closure of her case.

Furthermore, the only way that Petitioner's FAP benefits could continue after April 30, 2015 was if the semi-annual was received and processed. At the hearing, the Department acknowledged that the semi-annual contact report it received from Petitioner was processed. In this case, the Department processed the semi-annual contact report, found Petitioner eligible for continued FAP benefits, and issued FAP benefits to Petitioner after April 30, 2015 when the case was scheduled to close if a semi-annual contact report was not received. Under these circumstances, it follows that the Department could not rely on the untimeliness of the semi-annual contact report to close Petitioner's FAP case. Doing so would be contrary to its responsibility to explain client responsibilities in understandable terms. BAM 105 (July 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 August 1, 2015; and
2. Issue supplements to Petitioner from August 1, 2015 ongoing for FAP benefits she was eligible to receive but did not due to the improper closure.



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

Date Signed: **1/27/2016**

Date Mailed: **1/27/2016**

ACE / tlf

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]
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