

**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.: 15-020914
Issue No.: 3008
Agency Case No.: [REDACTED]
Hearing Date: January 06, 2016
County: OAKLAND 2

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, telephone hearing was held on January 06, 2016, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (husband and authorized hearing representative of [REDACTED]). [REDACTED] (Eligibility Specialist) represented the Department of Health and Human Services (Department). Witnesses on behalf of the Department included [REDACTED] (Assistance Payments Supervisor).

ISSUE

Did the Department of Health and Human Services (Department) properly determine the Claimant's eligibility for the Food Assistance Program (FAP)?

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 is an ongoing Food Assistance Program (FAP) recipient.
2. On August 6, 2015, the Department notified the Claimant that he was approved for a [REDACTED] monthly allotment of Food Assistance Program (FAP) benefits effective April 1, 2015.
3. On September 10, 2015, the Department sent the Claimant a Semi-Annual Contact Report (DHS-1046) with a due date of October 1, 2015.
4. The Department received the Claimant's completed Semi-Annual Contact Report (DHS-1045) on September 21, 2015.
5. On October 2, 2015, the Department notified the Claimant that he was approved for a [REDACTED] monthly allotment of Food Assistance Program (FAP) benefits effective October 1, 2015.

6. On November 4, 2015, the Department received the Claimant's request for a hearing protesting the Department's August 6, 2015, and October 2, 2015, notices of case action regarding food assistance benefits.

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.

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service.
Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2015), pp 3-4.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2015), p. 6, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days.

The Claimant is an ongoing FAP recipient and it is his right to request a hearing for the current level of FAP benefits. The request for a hearing must be received by the

Department within 90 calendar days from the date of the notice of case action. In this case, the Claimant requested a hearing within 90 days of the August 6, 2015, Notice of Case Action. Therefore, the Claimant is entitled to a hearing protesting the level of benefits on his August 6, 2015, Notice of Case Action, which contained notice of his FAP eligibility through April 1, 2015.

The Claimant's request for a hearing gave the Department notice that he was protesting the Department's Notice of Case Actions mailed on August 6, 2015, and October 2, 2015, regarding food assistance affected. The Claimant also indicated that he was protesting his FAP eligibility based on the Department's determination of his income and expenses.

The Department prepared a hearing summary with regard to a Notice of Potential Food Assistance (FAP) closure (DHS-1046-A) that notified him that FAP benefits would be closed unless he returned his Semi-Annual Contact form before September 30, 2015. The Department's representative testified that the Claimant reported no changes to his circumstances on this form, which was received by the Department on September 21, 2015, and therefore there was no negative action with respect to FAP benefits based on the Semi-Annual Contact form.

The production of evidence to support the department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich167; 405 NW2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction. The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced.

McKinstry, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), Sec. 336, p. 946.

This Administrative Law Judge finds that the Department received notice that the Claimant was protesting the amount of his monthly allotment of FAP benefits and that the Department failed to present sufficient evidence to establish that FAP benefits were properly determined based on the Claimant's income and expenses.

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 the Claimant's eligibility for Food Assistance Program (FAP) benefits effective April 1, 2015.

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. Initiate a determination of the Claimant's eligibility for the Food Assistance Program (FAP) effective April 1, 2015.
2. Allow the Claimant a ten-day period to provide the Department with any information necessary to accurately determine his eligibility for Food Assistance Program (FAP) benefits as of April 1, 2015.
3. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.
4. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **1/7/2016**

KS/nr

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:

