



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: [REDACTED]
MAHS Docket No.: 16-006708
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 [REDACTED], from Detroit, Michigan. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by [REDACTED] manager.

ISSUES

The first issue is whether Petitioner timely requested a hearing to dispute a reduction in Food Assistance Program (FAP) eligibility.

The second issue is whether MDHHS properly determined Petitioner'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. Petitioner was an ongoing FAP benefit recipient.
2. On [REDACTED], MDHHS determined Petitioner was eligible to receive \$16 in FAP benefits, effective [REDACTED], and issued written notice of the determination to Petitioner.
3. On [REDACTED] Petitioner verified with MDHHS a rent obligation of \$214.

4. On [REDACTED], MDHHS determined Petitioner's FAP eligibility, effective [REDACTED], in part based on \$0 in rent expenses.
5. On [REDACTED], Petitioner requested a hearing to dispute the reduction in FAP benefits to \$16.

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).

Petitioner's hearing request stated he disputed a reduction in FAP benefits. Petitioner's hearing request did not state which benefit month was first affected by the reduction, though he testified he requested hearing to dispute whenever MDHHS reduced his FAP eligibility from approximately \$150 to \$16/month.

MDHHS presented documents listing Petitioner's FAP issuance history (Exhibit 1, pp. 8-10). The documents indicated Petitioner was eligible to receive \$16 beginning [REDACTED]. The documents also indicated Petitioner received \$16 in FAP every month since.

Though Petitioner was unable to state when the \$16 issuance began, he testified that it was improbable the issuance began as far back as [REDACTED]. Petitioner stated there was an "obvious error" though was unable to state what error there was. It is found Petitioner began to receive \$16 beginning [REDACTED]. Accordingly, Petitioner's hearing request will be interpreted as a FAP benefit dispute beginning [REDACTED].

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 (April 2015), p. 6. The request must be received in the local office within the 90 days. *Id.*

Petitioner requested a hearing on [REDACTED]. MDHHS presented a Notice of Case Action (Exhibit 1, pp. 1-4) dated [REDACTED]. The notice stated Petitioner would receive \$16 in FAP benefits, effective [REDACTED]. Thus, it appears Petitioner was extraordinarily untimely in requesting a hearing by waiting over one year to dispute FAP eligibility.

Petitioner testified he never received the Notice of Case Action dated [REDACTED]. Petitioner testimony conceded the address listed on the notice was his correct mailing address at the time of mailing. Thus, it cannot be stated that MDHHS mailed the notice to the incorrect address.

Consideration was given to whether MDHHS actually mailed the notice. MDHHS presented a history of correspondence mailed to Petitioner (Exhibit 1, p. 5). The written notice at issue was listed as sent to Petitioner on [REDACTED], via "central print." Documents centrally printed are understood to be generated and mailed via automation; thus, human error is eliminated as a possible explanation for non-mailing.

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). It is found MDHHS properly mailed notice of Petitioner's FAP eligibility beginning [REDACTED]

Petitioner testified he does not always receive his mail. Even if Petitioner's testimony was accepted, it is not appreciated how or why Petitioner would have failed to request a hearing sooner than one year after the reduction. Petitioner attempted to excuse the delay by testifying he maintained a "cushion" of FAP benefits in his account; thus, he would not have noticed the reduction until his FAP benefits eventually exhausted. Petitioner's testimony does not adequately rebut the presumption of mailing.

It is found MDHHS mailed proper written notice of the \$16 reduction. Accordingly, Petitioner's hearing request is dismissed concerning FAP eligibility from [REDACTED] through [REDACTED]

As it happened, MDHHS redetermined Petitioner's FAP eligibility in [REDACTED]. As a result, a Notice of Case Action (Exhibit 1, pp. 6-7) dated [REDACTED], was mailed to Petitioner. The notice stated Petitioner was entitled to receive \$16 in FAP benefits from [REDACTED]. Petitioner's hearing request was timely submitted to disputed FAP eligibility from [REDACTED]. As Petitioner's FAP eligibility from [REDACTED] is included within Petitioner's primary dispute, there is jurisdiction to address whether MDHHS properly determined Petitioner's FAP eligibility from [REDACTED].

The Notice of Case Action dated [REDACTED], included a budget summary of all FAP benefit budget factors. Petitioner conceded the following listed factors were correct: unearned income (\$747), utilities (\$0), child support expenses (\$0), day care expenses (\$0), and medical expenses (\$0). Petitioner conceded the FAP benefit group size was only him; a 1-person FAP benefit group justifies a standard deduction of \$154 (see RFT 255 ([REDACTED]), p. 1), the same as listed on the summary.

The only disputed budget factor concerned rent. MDHHS factored Petitioner's rent to be \$0. Petitioner testified he reported and verified a rent amount of \$214/month. MDHHS testimony indicated Petitioner reported "no changes" to his rent on a Redetermination, and Petitioner submitted verification of a \$214 rent to MDHHS on [REDACTED]; Petitioner did not dispute the MDHHS statements.

MDHHS redetermined Petitioner's FAP eligibility, effective [REDACTED]. As of [REDACTED], MDHHS possessed Petitioner's \$214 rent verification for four weeks. It is not understood why MDHHS did not factor the \$214 rental obligation. MDHHS will be ordered to redetermine Petitioner's FAP eligibility from [REDACTED].

MDHHS testimony indicated a preliminary FAP budget including the rent made no change to Petitioner's FAP issuance. The MDHHS testimony cannot be verified at this time, however, it is possible that the inclusion of Petitioner's rent will not increase FAP eligibility.

Petitioner should be advised that he might benefit from pursuing FAP benefits through the Michigan Combined Application Project (MiCAP). MiCAP is a FAP "demonstration project (see BEM 618 [REDACTED] p. 1) available to persons whose only income is SSI. MiCAP may be a better program for Petitioner's circumstances because, generally, the FAP issuances are more generous when there are no utility obligations. Petitioner may pursue MiCAP by calling ([REDACTED])

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that Petitioner untimely requested a hearing to dispute FAP eligibility from [REDACTED]. Petitioner's hearing request is **PARTIALLY DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly redetermined Petitioner's FAP eligibility. It is ordered that MDHHS begin to perform the following actions within 10 days of the date of mailing of this decision:

- (1) Redetermine Petitioner's FAP eligibility, effective [REDACTED], subject to the finding that Petitioner timely verified a rent obligation of \$214; and
- (2) Issue a supplement of benefits, if any, to Petitioner.

The actions taken by MDHHS are **PARTIALLY REVERSED**.

CG/hw



Christian Gardocki

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to [REDACTED] 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

DHHS

[REDACTED]

Petitioner

[REDACTED]