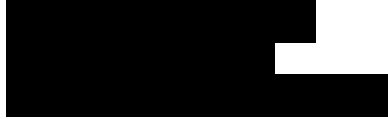


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

IN THE MATTER OF:



MAHS Reg. No.: 16-000226
Issue No.: 3001
Agency Case No.: [REDACTED]
Hearing Date: February 18, 2016
County: Saginaw

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

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 February 18, 2016, from Lansing, Michigan. Claimant personally appeared and testified. The Department was represented by Hearing Facilitator [REDACTED].

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) benefits due to Claimant's student status?

FINDINGS OF FACT

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

1. Claimant was receiving FAP benefits at all times pertinent to this hearing.
2. On December 21, 2015, the Department manually generated and mailed Claimant a Benefit Notice advising Claimant that, effective November 30, 2015, her Claimant's FAP benefits case closed because she was not an eligible student. (Dept. Exh. A, pp 2-3).
3. On January 7, 2016, the Department received Claimant's Request for Hearing, protesting the closure of Claimant's FAP case. Dept. Exh. A, pp 2-3).

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).

As an initial matter, Claimant testified that she did not receive proper notice of the closure of her FAP benefits.

Timely notice is given for a negative action unless policy specifies adequate notice or no notice. BAM 220, p 2 (10/1/2015). A negative action is a MDHHS action to deny an application or to reduce, suspend or terminate a benefit. BAM 220, p 1. A timely notice is mailed at least 11 days before the intended negative action takes effect. BAM 220, p 2. The action is pended to provide the client a chance to react to the proposed action. BAM 220, p 2.

The timely hearing request date is the last date on which a client can request a hearing and have benefits continued or restored pending the hearing. It is always the day before the negative action is effective. BAM 220, pp 11-12.

In this case, the Department admitted Claimant was not provided timely notice regarding the closure of her FAP benefits. The Benefit Notice dated December 21, 2015 informed the Claimant that she had until January 4, 2016 to submit a timely hearing request to continue to receive FAP benefits pending the hearing. Claimant submitted the hearing request on January 7, 2016 and as a result, her FAP benefits were ended.

Claimant first argued that she did not receive the Benefit Notice timely and therefore should not be penalized for not submitting her hearing request timely. While this Administrative Law Judge has been unable to find any penalty against the Department for not meeting their own Standards of Promptness, Departmental policy is clear that if a Claimant fails to timely submit a hearing request to continue FAP benefits pending a hearing, the FAP benefits will be closed. Claimant indicated on her hearing request that she received the Benefit Notice in December 2015, therefore, this Administrative Law Judge finds she had at least a week to timely submit her hearing request, and failing to do so, the Department properly closed her FAP case.

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.

A person is in student status if he is:

- Age 18 through 49 and
- Enrolled half-time or more in a: BEM 245, p 3, 10/1/2015.
 - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.
 - Regular curriculum at a college or university that offers degree programs **regardless** of whether a diploma is required.

In order for a person in student status to be eligible, they must meet one of the following criteria:

- Receiving Family Independence Program (FIP).
- Enrolled in an institution of higher education as a result of participation in:
 - A Job Training Partnership Act (JTPA) program.
 - A program under section 236 of the Trade Readjustment Act of 1974 us 19 USC 2341, et. seq.
 - Another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year. BEM 245, p 4.

To qualify under this provision the student must be approved for work study during the school term and anticipate actually working during that time. The exemption:

- Starts the month the school term begins or the month work study is approved, whichever is later.

- Continues until the end of the month in which the school term ends, or when the local office becomes aware that the student has refused a work-study assignment.
- Remains between terms or semesters when the break is less than a full month, or the student is still participating in work study during the break.
- Providing more than half of the physical care of a group member under the age of six.
- Providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate child care is not available to:
 - Enable the person to attend class and work at least 20 hours per week.
 - Participate in a state or federally-financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12. This includes a person who does not live with his or her spouse, who has parental control over a child who does **not** live with his or her natural, adoptive or stepparent.

For the care of a child under age six, consider the student to be providing physical care as long as he or she claims primary responsibility for such care, even though another adult may be in the Food Assistance Program (FAP) group.

When determining the availability of adequate child care for a child six through 11, another person in the home, over 18, need not be a FAP group member to provide care.

The person remains in student status while attending classes regularly. Student status continues during official school vacations and periods of extended illness. Student status does not continue if the student is suspended or does not intend to register for the next school term (excluding summer term). BEM 245, p 5.

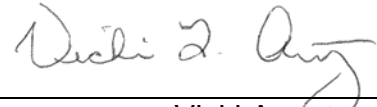
In this case, Claimant admitted at the hearing that she was in student status but did not otherwise meet the eligibility criteria at the time that the Department closed her FAP benefits case effective November 30, 2015.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department acted in accordance with policy in closing Claimant's FAP benefits case.

The Department's actions are **AFFIRMED**.

It is **SO ORDERED**.



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **2/22/2016**

VA/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:

