



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: June 9, 2016
MAHS Docket No.: 16-001004
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Susanne E. Harris

REHEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MCL 400.37; and MAC R 400.919 upon an Order of Rehearing granted on July 31, 2008. On May 12, 2016, an in-person rehearing was held at the Kalamazoo County DHHS office. The Petitioner, [REDACTED] appeared and testified. The Department was represented by Hearing Facilitator, [REDACTED]

ISSUE

Did the Department act in accordance with Departmental policy when taking action to reduce the Petitioner's monthly Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. On December 10, 2014, the Department processed the Petitioner's redetermination and mid-certification for FAP. The Petitioner's heat and utility standard was removed.
2. On December 10, 2014, the Department sent the Petitioner a Notice of Case Action informing the Petitioner that he was approved for FAP with a monthly allotment of \$ [REDACTED]. This notice indicated that the Petitioner was still being afforded the heat and utility standard of \$ [REDACTED].
3. The Petitioner's FAP budget still afforded the Petitioner the heat and utility standard due to the delayed implementation of changes due to the Agricultural Act of 2014. Per Bridges Eligibility Manual (BEM) 554, the Department's worker was instructed that the Petitioner be afforded the heat and utility standard for a period of five months after the month of his redetermination.

4. On May 7, 2015, the Department sent the Petitioner a Notice of Case Action informing the Petitioner that he was approved for FAP with a monthly allotment of \$ [REDACTED]. This notice clearly reflected that the Petitioner was not being afforded the \$ [REDACTED] and utility allowance.
5. On January 22, 2016, the Department received the Petitioner's written hearing request protesting the reduction in his monthly FAP allotment, citing a due process violation.
6. On March 9, 2016, Administrative Law Judge (ALJ) Darryl Johnson heard the case and subsequently issued an Order of Dismissal for Lack of Jurisdiction, as the Petitioner's hearing was not requested within 90 days as required by Bridges Administrative Manual (BAM) 600.
7. On March 29, 2016, the Michigan Administrative Hearing System received the Petitioner's written request for a Rehearing/Reconsideration.
8. On April 13, 2016, Supervising Administrative Law Judge Marya Nelson-Davis issued an Order Granting Request for Reconsideration and Decision and Order of Reconsideration, which ordered a rehearing on the matter.

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.

During the hearing, the Petitioner contended that his due process rights had been violated. It was pointed out to the Petitioner that he had already achieved his remedy for the due process concern, which was the instant rehearing. The Petitioner requested on the record a complete audit of his entire FAP case back to the day that he began receiving benefits. The Petitioner was informed that this Administrative Law Judge would only be addressing the Notice of Case Action from May 2015 forward because that is when the FAP reduction occurred. This is the FAP reduction the Petitioner is protesting in his hearing request. The Administrative Law Judge concludes that any issues prior to the May 2015 Notice of Case Action are beyond the scope of this rehearing.

It should be noted that at the hearing, the Petitioner stated that he thought the Administrative Law Judge was biased, but he did not move for recusal of this Administrative Law Judge. The undersigned Administrative Law Judge does not know this Petitioner, nor does she have an interest in the outcome of this matter and determined that she is not biased against the Petitioner. Furthermore, R 792.10106 requires a written motion for recusal if the party is seeking disqualify the Administrative Law Judge and no such motion was submitted at the hearing. As such, this Administrative Law Judge proceeds to a decision.

In the Order of Reconsideration, it has already been determined that the May 7, 2015, Notice of Case Action does not meet the *adequate notice* criteria. Furthermore, the heat and utility standard was removed from the Petitioner's FAP budget in December 2014, yet the Petitioner was afforded the heat and utility standard until May, 2015. The Petitioner argues that had he been informed that all he needed was to procure and then verify his Home Heating Credit, he would have still been eligible for the heat and utility standard and need not have suffered the reduction in his FAP case.

Bridges Eligibility Manual (BEM) 554 (2014) addresses budgeting FAP expenses, including shelter expenses. BEM 554 pp. 15, 16, describe the effects of the Agricultural Act of 2014 on the heat and utility standard. It provides that the Department is to verify heating separate from housing costs at application, redetermination, or when a change is reported. In this case, there is no evidence to indicate that the Petitioner was sent a Shelter Verification form during his redetermination. As such, this Administrative Law Judge concludes that the Department was not acting in accordance with departmental policy when taking action to reduce the Petitioner's FAP allotment.

DECISION AND ORDER

This Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department was not acting in accordance with departmental policy when taking action to reduce the Petitioner's FAP allotment.

Accordingly, the Department's decision is **REVERSED**. It is ORDERED that the Department shall, in accordance with departmental policy within 10 days and initiate the following:

1. Redetermine the Petitioner's eligibility for FAP back to May 7, 2015, and
2. Afford the Petitioner an opportunity to verify his home and heating expenses back to May 7, 2015, and
3. Issue the Petitioner any supplement he may thereafter be due.

4. The Petitioner retains the right to protest the new eligibility determination.

Susanne E. Harris

SH/nr

Susanne E. Harris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE: The law provides that within 30 days of receipt of the this Decision, the Claimant may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County.

DHHS

[REDACTED]

Petitioner

[REDACTED]