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GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: June 10, 2016
MAHS Docket No.: 16-005808
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

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 three-way telephone hearing was held on June 1, 2016, from Detroit, Michigan. The Petitioner was represented by [REDACTED] (Petitioner). The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits effective [REDACTED]?

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 is an ongoing recipient of FAP benefits.
2. On [REDACTED], the Department sent Petitioner a Redetermination (DHS-1010) to redetermine her FAP eligibility, which was due back by [REDACTED]. See Exhibit A, pp. 4-9. The redetermination also informed Petitioner that she had a telephone interview scheduled for [REDACTED]. See Exhibit A, p. 4.
3. The Department indicated that it never received the redetermination by [REDACTED] thus, no telephone interview was conducted.

4. On [REDACTED], the Department sent Petitioner a Notice of Missed Interview (DHS-254) notifying her to reschedule her interview before [REDACTED] or her redetermination will be denied. See Exhibit A, p. 3
5. Petitioner indicated that she had mailing issues and never received the redetermination or notice of missed interview until after the due date and the benefits had already closed.
6. Effective [REDACTED], Petitioner's FAP benefits closed based on not receiving the completed redetermination.
7. On or around [REDACTED], Petitioner indicated that she finally received her redetermination from the United States Postal Service (USPS).
8. On [REDACTED], Petitioner contacted her specialist explaining that she had mailing issues and none of her mail had been delivered. See Exhibit A, p. 1.
9. On [REDACTED], Petitioner submitted the redetermination, which was after the due date. See Exhibit A, pp. 4-9.
10. On [REDACTED], Petitioner also submitted a State Emergency Relief (SER) application requesting emergency FAP assistance. See Exhibit A, pp. 10-12.
11. On [REDACTED], the Department sent Petitioner an Application Notice denying the SER application as the SER application was an improper application request for FAP assistance. See Exhibit A, pp. 1 and 13.
12. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action and requested a three-way hearing. See Exhibit A, p. 14.

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.

A complete redetermination is required at least every 12 months. BAM 210 (January 2016), p. 1. Local offices must assist clients who need and request help to complete applications, forms and obtain verifications. BAM 210, p. 1.

For FAP cases, benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. BAM 210, p. 2. If the client does not begin the redetermination process, the Department allows the benefit period to expire. BAM 210, p. 2.

Moreover, an interview is required before denying a redetermination even if it is clear from the DHS-1010/1171 or other sources that the group is ineligible. BAM 210, p. 3. For FAP telephone interviews, the individual interviewed may be the client, the client's spouse, any other responsible member of the group or the client's authorized representative. BAM 210, p. 4. If the client misses the interview, the Department sends a DHS-254, Notice of Missed Interview. BAM 210, p. 4. The Department conducts a telephone interview at redetermination before determining ongoing eligibility. BAM 210, p. 4 and also policy relating to in-person interviews. To conduct the interview, the Department obtains a complete redetermination/review packet from the client. BAM 210, p. 12 (see additional steps the Department completes when conducting the interview).

A redetermination/review packet is considered complete when all of the sections of the redetermination form including the signature section are completed. BAM 210, p. 10. Exception, for FIP, SDA and FAP only, if any section of the redetermination/review packet has not been completed but there is a signature, consider the redetermination/review complete. BAM 210, p. 10. Complete any missing sections during the interview. BAM 210, p. 10.

When a complete packet is received, the Department records the receipt in its system as soon as administratively possible. BAM 210, p. 10. If the redetermination is submitted through MI Bridges, the receipt of the packet will be automatically recorded. BAM 210, p. 10.

For FAP cases, if the redetermination packet is not logged in by the last working day of the redetermination month, the Department automatically closes the Eligibility Determination Group (EDG). BAM 210, p. 11. A DHS-1605, Notice of Case Action, is not generated. BAM 210, p. 11.

At the hearing, the Department ultimately argued that Petitioner failed to submit the completed redetermination before the end of the redetermination month (██████████), ██████████. Therefore, the Department indicated that it properly closed her FAP benefits effective ██████████, due to her failure to complete the redetermination process.

In response, Petitioner argued that she had mailing issues and never received the redetermination or notice of missed interview until after the due date and the benefits had already closed. Petitioner testified as to the following: (i) before November 2015,

her mail was delivered to her door; (ii) on or around November 2015, her residence location switched to a panel box system; (iii) she is disabled and unable to obtain her mail from the panel box and attempted to contact the Department initially to inform them of the issue, but to no avail; (iv) she also contacted the USPS to request delivery of mail to her door based on her hardship (hardship request submitted to the USPS); (v) it was discovered that some of the mail was put in the wrong panel box key slot and is the reason why she did not receive the paperwork until after the case closure; (vi) she indicated that she was receiving some mail, but never received the Department's paperwork; (vii) on or around [REDACTED], USPS delivered Petitioner bulk mail, which contained her redetermination; (viii) Petitioner completed the redetermination and forwarded it to the Department along with an SER application requesting emergency FAP benefits; and (ix) Petitioner contacted the Department on [REDACTED], which is the date the benefits are deposited onto her Bridge card.

Additionally, as part of the evidence record, the Department included the redetermination that was received on [REDACTED], but was signed by Petitioner on [REDACTED]. See Exhibit A, pp. 4-9. In the client comments section of the redetermination, Petitioner stated that the paperwork went to the wrong address, it was held at the Taylor post office, and that USPS just delivered the paperwork to her door. See Exhibit A, p. 9. Petitioner's hearing request received on [REDACTED], also reiterated the same argument. See Exhibit A, p. 14.

The proper mailing and addressing of a letter creates a presumption of receipt which 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).

Based on the foregoing information and evidence, the Department did not act in accordance with Department policy when it closed Petitioner's FAP benefits effective [REDACTED]. It is found that Petitioner rebutted the presumption of proper mailing. The undersigned finds Petitioner's testimony credible that she never received the redetermination until after her case closure and the redetermination process had already ended. Petitioner's credibility is supported by the comments section of her redetermination and her hearing request, which provided a documented history that she was experiencing mailing issues with USPS at the time. See Exhibit A, pp. 9 and 14. Petitioner presented persuasive evidence, along with her credible testimony, to show to the undersigned that she in fact did not receive the redetermination before the case had closed. As such, the evidence established that because Petitioner never received the redetermination before March 2016, she was unable to submit the form by the due date. Because the Petitioner rebutted the presumption of proper mailing, the Department improperly closed her FAP benefits effective [REDACTED], in accordance with Department policy. See BAM 210, pp. 1-12.

DECISION AND ORDER

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 benefits effective [REDACTED].

Accordingly, the Department's FAP 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. Redetermine Petitioner's FAP eligibility effective [REDACTED];
2. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from [REDACTED], ongoing;
3. Notify Petitioner of its decision.

EF/hw



Eric J. Feldman

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 (517) 335-6088; 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]

[REDACTED]

[REDACTED]