



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: February 3, 2017
MAHS Docket No.: 16-018569
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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, an in person hearing was held on January 26, 2017, from [REDACTED] Michigan. The Petitioner was represented by himself. The Department of Health and Human Services (Department) was represented by [REDACTED] [REDACTED] Hearing Facilitator. Department Exhibit 1, pp.1-95 was received and admitted. Petitioner's Exhibits A and B were also admitted.

ISSUE

Did the Department properly determine Petitioner's Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. On June 9, 2016, a rehearing decision was entered instructing the Department to redetermine Petitioner's FAP eligibility going back to May 7, 2015, and give Petitioner an opportunity to verify heat and utility expenses and whether he received the home heating credit going back to May 7, 2015. (Dept. Ex.1, pp. 65-68)
2. On June 14, 2016, a verification checklist was sent to Petitioner requesting "rent expense and heat and electric expense from May 2015 through March 2016." Proofs were due by June 24, 2016. (Dept. Ex.1, pp. 69-70)

3. On June 23, 2016, Petitioner submitted a copy of his current lease and copy of a lease for the time period between July 1, 2012, and June 30, 2013.
4. Petitioner's former landlord confirmed that Petitioner was not responsible for heat and utilities at the apartment where Petitioner resided previously at [REDACTED]. (Dept. Ex.1, p.88)
5. Petitioner received the home heating credit on May 10, 2010, and March 2, 2016. (Dept. Ex. 1, p.89)
6. On July 28, 2016, a Benefit Notice was sent to Petitioner which stated the following: "We did not receive any proof that verifies you had a heat and electric expense May 2015-March 2016, the time frame indicated on the Hearing Reconsideration issued by the ALJ. You will not receive any supplements for this time period. You are currently receiving the Heat and Electric Standard as of April 2016 due to you submitting verification that a Home Heating Credit was issued to you on March 2, 2016." (Dept. Ex. 1, pp. 91-92)
7. On December 5, 2016, Petitioner requested hearing contesting the July 28, 2016, decision notice.

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.

Home Heating Credit (HHC)

New Applications

FAP groups who have received a HHC in an amount greater than \$20 in the application month or in the immediately preceding 12 months prior to the application month are eligible for the h/u standard.

Existing FAP Groups

FAP groups who are at redetermination or have their first case change and have received a HHC in an amount greater than \$20 in the certification month or in the immediately preceding 12 months prior to the certification month are eligible for the h/u standard.

Verification

Verify receipt of HHC at application, redetermination or when a change is reported.

Verification Sources

Acceptable verification sources include, but are not limited to:

- Bridges inquiry. (HHC Approved Client Inquiry).
- Letter from provider.
- Collateral contact with provider.
- Copy of HHC warrant. BEM 554 (October 1, 2015)

In this case, Petitioner's request for hearing disputed the July 28, 2016, Benefit Notice finding that "We did not receive any proof that verifies you had a heat and electric expense May 2015-March 2016, the time frame indicated on the Hearing Reconsideration issued by the ALJ. You will not receive any supplements for this time period. You are currently receiving the Heat and Electric Standard as of April 2016 due to you submitting verification that a Home Heating Credit was issued to you on March 2, 2016."

Petitioner agreed at hearing that he was not responsible for heat and utilities between May 2015 and March 2016. The statement for his previous landlord also confirmed that. (Dept. Ex. 1, p.88) Petitioner agreed that he received the Home Heating Credit on March 2, 2016, and the Department provided a printout confirming that. (Dept. Ex.1, p.89) Petitioner contended at hearing that the Home Heating Credit he received on March 2, 2016, covered the time period going back to May 2015 and therefore he should receive the Heat and Utility Expense Deduction going back to May 2015. Petitioner also asserted that the Department had an affirmative duty to inform him that he was eligible for the Home Heating Credit and to inform him that receipt of that credit would allow him to receive the Heat and Utility Expense Deduction.

Department policy BEM 554, p. 18, states for Existing FAP Groups, "FAP groups who are at redetermination or have their first case change and have received a HHC in an amount greater than \$20 in the certification or in the immediately preceding 12 months prior to the certification month are eligible for the h/u standard." This policy does not instruct the case worker to go back and redetermine eligibility for the previous 12 months. The heat and utility standard is given for the prospective certification period based on receipt of the HHC in the certification month or the previous 12 months. Petitioner's contention that he should have been given the heat and utility standard for the previous 12 months is not supported by Department policy. BEM 554 Therefore, the Department's determination to allow the heat and utility standard from April 2016, going forward was proper and correct and consistent with Department policy. In addition, the Department has no affirmative duty to inform recipients that they are potentially eligible for the Home Heating Credit.

Issues were raised with regard to whether Petitioner's December 6, 2016, hearing request, to dispute the July 28, 2016, Department Benefit Notice was timely. Petitioner

filed a Claim of Appeal in the ██████████ County Circuit Court on July 7, 2016. That action was dismissed on September 28, 2016. Petitioner filed an Application-Motion for Leave to Appeal on October 6, 2016. Petitioner's Motion for Reconsideration filed in the State of Michigan Court of Appeals LC No. ██████████, Docket No. ██████████ was denied on December 9, 2016.

If MAHS retained concurrent jurisdiction during the pendency of Petitioner's ██████████ County Circuit Court Claim of Appeal and his Motion for Reconsideration filed in the Michigan Court of Appeals then his December 5, 2016, request for hearing was untimely because it was more than 90 days after the Benefit Notice was issued on July 28, 2016, and his request for hearing could have been dismissed as untimely. BAM 600 (October 2016).

If the ██████████ County Circuit Court and the Michigan Court of Appeals had exclusive subject matter jurisdiction during the pendency of those actions, (from July 7, 2016, through December 9, 2016) as Petitioner contended at hearing, then when Petitioner filed his request for hearing on December 5, 2016, MAHS had no jurisdiction to address Petitioner's Request for Hearing and the December 5, 2016, request for hearing could have been dismissed for lack of subject matter jurisdiction.

It should be noted that Petitioner made accommodation requests related to the in person hearing held on January 27, 2017, and he acknowledged at hearing that those requests were met. Petitioner requested at hearing that the case workers who had been assigned his case during the time period in question be required to testify. Petitioner could not explain what facts the case workers would have that would be necessary to address the issues related to this hearing and his request was denied

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 acted in accordance with Department policy when it determined Petitioner's FAP benefits.

Accordingly, the Department's decision is **AFFIRMED**.

AM/mc



Aaron McClintic

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]

Petitioner

[Redacted]