



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: May 2, 2017  
MAHS Docket No.: 17-001846  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Gary Heisler

### **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 April 27, 2017, from Lansing, Michigan. Petitioner appeared for the hearing and was represented by Attorney [REDACTED]. The Department was represented by Assistance Payment Supervisor [REDACTED] and Assistance Payment Worker [REDACTED].

### **ISSUE**

Did the Department properly determine Petitioner's Food Assistance Program (FAP) eligibility on January 24, 2017?

### **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 recipient of Food Assistance Program (FAP) benefits. His Food Assistance Program (FAP) eligibility was due for redetermination by January 1, 2017.
2. On November 30, 2016, Petitioner submitted a pay slip for his weekly Temporary Total Disability payment for the period November 17, 2016 through November 23, 2016. (Department's Exhibit A page 24)

3. On December 28, 2016, Petitioner submitted three more pay slips for his weekly Temporary Total Disability payment for the periods October 27, 2016 through November 16, 2016. (Department's Exhibit A page 21 - 23)
4. On January 24, 2017, Petitioner was sent a Notice of Case Action (DHS-1605) which stated his Food Assistance Program (FAP) was closed from January 1, 2017 ongoing for failure to provide verification of his earned income.
5. On January 30, 2017, Petitioner submitted a hearing request.
6. During this hearing the Department made a verbal motion for adjournment in order to obtain representation by an Assistant Attorney General (AAG). The Department representatives were asked why they requested the adjournment. The reply was that Department policy requires them to do so when a client has obtained representation by an attorney. The adjournment request was denied. Administrative Law Hearing's on DHHS eligibility determinations are designed so that neither side requires an attorney. An Administrative Law Judge conducting these hearings has an expanded role to assist both sides in dealing with the legal requirements of the hearing. That includes assistance with development of their evidentiary record. Further, the Administrative Law Judge is required to base the decision on "competent, material and substantial evidence in the record" as required by the Michigan Administrative Procedures Act (MAPA). The requirements of MAPA make it unnecessary for either side to have an attorney. While the Department's policy may call for Department personnel to request representation by an AAG when a client has obtained representation by an attorney, it is not necessary, nor a requirement under the MAPA.

### **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.

The January 30, 2017, hearing request in this case limits the jurisdiction of this hearing to proper notices issued in accordance with Bridges Administration Manual (BAM) 600 Hearings and the facts and circumstances on or before January 30, 2017. The parties were more concerned with a subsequent eligibility determination made by the Department after January 30, 2017. Petitioner's counsel was informed that a hearing

request can be submitted on the subsequent eligibility determination, but it is not within the scope of this hearing.

The evidence in this record clearly shows that Petitioner submitted 4 pay slips for his weekly Temporary Total Disability payment for the periods October 27, 2016 through November 23, 2016. Since Petitioner was receiving Temporary Total Disability payments, he was not receiving any earned income from work. The Department's eligibility determination to close Petitioner's Food Assistance Program (FAP) for failure to provide verification of his earned income, does not comport with the evidence in this record. 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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Petitioner's Food Assistance Program (FAP) eligibility on January 24, 2017.

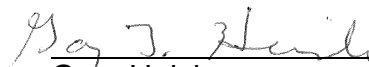
### **DECISION AND ORDER**

Accordingly, the Department's 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. Reinstate Petitioner's redetermination and process in accordance with Department policy to include issuing an updated eligibility determination from January 1, 2017 ongoing.

GH/nr



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Gary Heisler  
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]

**Counsel for Petitioner**

[REDACTED]