



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: June 20, 2017  
MAHS Docket No.: 17-005315  
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, an in-person hearing was held on June 15, 2017, from Warren, Michigan. Petitioner was present for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

### **ISSUE**

Did the Department properly deny Petitioner's Food Assistance Program (FAP) application effective January 17, 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. Effective January 1, 2017, Petitioner FAP benefits had closed.
2. On January 17, 2017, Petitioner reapplied for FAP benefits. [Exhibit A, p. 15.]
3. On or about January 25, 2017, the caseworker left a voicemail for Petitioner in regards to her submitted application.
4. On February 7, 2017, the Department sent Petitioner a Notice of Missed Interview informing Petitioner that she recently missed her scheduled interview to apply for FAP benefits and it is now her responsibility to reschedule the interview before February 16, 2017, or her application will be denied. [Exhibit A, p. 17.]

5. Per the credible testimony of Petitioner, she received the caseworker's voicemail and contacted her caseworker back numerous times and left voicemails, but received no call back.
6. The Department alleged that it never received a call back from Petitioner.
7. On February 16, 2017, the Department sent Petitioner a Notice of Case Action notifying her that her FAP application was denied effective January 17, 2017 because she failed to complete the interview requirements. [Exhibit A, pp. 18-19.]
8. On April 20, 2017, Petitioner filed a hearing request, protesting the Department's action. [Exhibit A, pp. 20-21.]

### **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.

#### **Preliminary matter**

As a preliminary matter, Petitioner's FAP benefits were closed effective January 1, 2017, due to her failure to submit a redetermination. [Exhibit A, pp. 3-11.] Petitioner also wanted to dispute this closure. However, the undersigned Administrative Law Judge (ALJ) lacks the jurisdiction to address the closure effective January 1, 2017. Petitioner claimed that she never received the Redetermination (dated November 4, 2016) or the Notice of Missed Interview (December 1, 2016) informing her that her FAP benefits will close if she fails to submit the Redetermination because these notices were sent to her prior address. Petitioner testified that she moved to her current address in July 2016 and notified the Department of her change of address in an application submitted in October 2016. The Department testified that the notices were returned from the United States Postal Service (USPS), but received no notification from Petitioner of any address change until an application on January 6, 2017. [Exhibit A, pp. 13-14.] The Department reviewed the system and found no evidence of any application in October 2016, which Petitioner claimed she informed the Department of her address change.

Based on the above information, the undersigned lacks the jurisdiction to address Petitioner's FAP case closure effective January 1, 2017. 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). It is found that Petitioner failed to rebut the presumption of proper mailing. The Department provided sufficient evidence and testimony showing that it sent Petitioner the Redetermination and Notice of Missed Interview to her proper address it had at the time.

Furthermore, because the undersigned find's that the Department properly sent the notices to her proper address, the undersigned cannot address the closure because her hearing request was filed more than 90 days after the case closure. The closure of Petitioner's FAP benefits was January 1, 2017, but she did not file a hearing request until April 20, 2017. [Exhibit A, pp. 11 and 20.] The client or Authorized Hearing Representative (AHR) has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 (October 2016 and April 2017), p. 6. The request must be received in the local office within the 90 days. BAM 600, p. 6. Because Petitioner's hearing request was received more than 90 days after the notice, the undersigned lacks the jurisdiction to address the closure effective January 1, 2017. BAM 600, pp. 1-6. Nevertheless, the undersigned does have the jurisdiction to address the denial of her application dated January 17, 2017, because her hearing request was filed within 90-days of the denial notice dated February 16, 2017. [Exhibit A, pp. 18 and 20.]

### **FAP application**

For FAP only, the Department schedules the interview as a telephone appointment unless specific policy directs otherwise. BAM 115 (January 2017), p. 22. The interview must be held by the 20th day after the application date to allow the client at least 10 days to provide verifications by the 30th day. BAM 115, p. 22; BAM 115, pp. 20-21 (in-person interview policy.)

For FAP only, if clients miss an interview appointment, the Department sends a DHS-254, Notice of Missed Interview, advising them that it is the clients' responsibility to request another interview date. BAM 115, pp. 22-23. It sends a notice only after the first missed interview. BAM 115, p. 23. If the client calls to reschedule, the Department sets the interview prior to the 30th day, if possible. BAM 115, p. 23. If the client fails to reschedule or misses the rescheduled interview, the Department denies the application on the 30th day. BAM 115, p. 23. If failure to hold the interview by the 20th day or interview rescheduling causes the application to be pending on the 30th day; see Processing Delays in BAM 115. BAM 115, p. 23.

For FAP only, an interview is required before denying assistance even if it is clear from the application or other sources that the group is ineligible. BAM 115, p. 18. The Department does not deny the application if the client has not participated in a

scheduled initial interview until the 30th day after the application date even if he/she has returned all verifications. BAM 115, p. 18.

In this case, Petitioner applied for FAP benefits on January 17, 2017. [Exhibit A, p. 15.] Reviewing its system, the Department testified that the caseworker left a voicemail for Petitioner on January 25, 2017. As part of the evidence record, the Department presented a "General Details" screen that showed the interview appointment was scheduled on February 7, 2017, as an in-person interview, and she failed to show. [Exhibit A, p. 16.] However, based on the Department's testimony, it appeared that the interview was possibly a telephone interview on January 25, 2017 because the caseworker contacted Petitioner on this date. Thus, it was unclear whether the interview was by telephone or in-person. Nonetheless, the Department testified that Petitioner failed to participate in the interview and issued a Notice of Missed Interview on February 7, 2017, informing her that she recently missed her scheduled interview to apply for FAP benefits and it is now her responsibility to reschedule the interview before February 16, 2017, or her application will be denied. [Exhibit A, p. 17.] The Department argued that Petitioner failed to contact the Department back to reschedule her interview. As such, the Department denied her FAP application based on her failure to complete the interview requirements. [Exhibit A, pp. 18-19.]

In response, Petitioner testified that she did recall her caseworker contacting her and leaving a voicemail, with her contact number. Petitioner was unclear which date the caseworker called, but did not dispute that it could have been January 25, 2017. Thereafter, Petitioner testified that she contacted her caseworker numerous times and left voicemails after receiving the call, but never received any contact back. Thus, Petitioner argues that her application should be reprocessed as she properly contacted her caseworker back, as instructed by the Notice of Missed Interview, but never received any call back. It should be noted that Petitioner was unable to provide her phone to show proof of the calls.

Based on the foregoing information and evidence, the Department improperly denied Petitioner's FAP application dated January 17, 2017, in accordance with Department policy. The undersigned finds that Petitioner credibly testified that she attempted to contact her caseworker back numerous times in order to conduct her interview, but never received any call back. Petitioner's credibility is supported by her hearing request, which provided similar statements of Petitioner's repeated attempts to get ahold of her caseworker, but to no avail. [Exhibit A, pp. 20-21.] Because the undersigned finds Petitioner's testimony credible, the Department should have rescheduled Petitioner's interview as she made numerous attempts to complete the interview process, but the Department failed to do so in accordance with Department policy. BAM 115, pp. 18 and 20-23.

**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 improperly denied Petitioner's FAP application effective January 17, 2017.


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. Initiate reregistration and reprocessing of Petitioner's FAP application dated January 17, 2017;
2. Issue supplements to Petitioner for any FAP benefits she was eligible to receive but did not from January 17, 2017, ongoing; and
3. Notify Petitioner of its decision.

**IT IS ALSO ORDERED** that Petitioner's FAP hearing request concerning the closure of her benefits effective January 1, 2017, is **DISMISSED**, for lack of jurisdiction.

EF/tm

  
\_\_\_\_\_  
**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]  
[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

CC: [REDACTED]  
[REDACTED]