



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR



Date Mailed: March 1, 2018
MAHS Docket No.: 18-000375
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on February 20, 2018, from [REDACTED] Michigan. Petitioner represented himself. The Department was represented by [REDACTED] Assistance Payments Supervisor, and [REDACTED] Eligibility Specialist.

ISSUE

Did the Department of Health and Human Services (Department) properly determine Petitioner's eligibility for 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 November 9, 2017, the Department received Petitioner's request for a hearing protesting the amount of his monthly allotment of Food Assistance Program (FAP) benefits for June, July, August, and September of 2017.
2. On January 11, 2018, a hearing was held based on Petitioner's November 9, 2017, hearing request.
3. On January 18, 2018, the Michigan Administrative Hearing System (MAHS) issued a Hearing Decision upholding the Department's determination of Petitioner's eligibility for Food Assistance Program (FAP) benefits. (See Reg 17-014867).
4. On January 11, 2018, the Department received Petitioner's request for a hearing protesting the amount of monthly allotment of Food Assistance Program (FAP) benefits.

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.

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to review the decision and determine the appropriateness. MAHS may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits, or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service.

Department of Human Services Bridges Administrative Manual (BAM) 600 (January 1, 2018), pp 3-4.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (January 1, 2018), p. 6, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days.

The Department will consider only the medical expenses of senior/disabled/veteran (SDV) persons in the eligible group or SDV persons disqualified for certain reasons. A FAP group is not required to but may voluntarily report changes during the benefit period. Department of Health and Human Services Bridges Eligibility Manual (BEM) 554 (October 1, 2015), pp 8 – 9.

The Medical Expenses amount is determined by totaling allowable monthly medical expenses (rounded to whole dollar amounts) and reducing this amount by a \$ [REDACTED] medical deduction. Department of Health and Human Services Bridges Eligibility Manual (BEM) 556 (July 1, 2013), p 4.

On November 9, 2017, Petitioner requested a hearing protesting the amount of his current level of FAP benefit. Petitioner alleged that the Department failed to properly account for his medical expenses as an ongoing recipient of FAP benefits and a SDV person. On January 18, 2018, the Department's determination of Petitioner's eligibility for FAP benefits was upheld because Petitioner failed to present evidence showing medical expenses that he had reported to the Department and where not applied towards his eligibility for FAP benefits. This was a final decision that cannot be reconsidered in this hearing decision.

On January 11, 2018, the Department received another request for a hearing. The Department's representative argues that the issues raised in Petitioner's November 9, 2017, request for a hearing have already been resolved by the prior final hearing decision mailed on January 18, 2018.

However, Petitioner is entitled to a hearing under BAM 600 to a hearing to determine his current level of FAP benefits. The prior hearing decision was a final decision with respect to Petitioner's FAP benefits from June 1, 2017, through September 30, 2017, but did not address his current level of benefits. Therefore, Petitioner has a right to a hearing protesting his eligibility for FAP benefits.

The production of evidence to support the department's position is clearly required under BAM 600 as well as general case law (see e.g., *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 [1976]). In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich167; 405 NW2d 88 (1987), the Michigan Supreme Court addressed the issue of burden of proof, stating in part:

The term "burden of proof" encompasses two separate meanings. [citation omitted.] One of these meanings is the burden of persuasion or the risk of nonpersuasion. The other is the risk of going forward or the risk of nonproduction. The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually on the party who has pleaded the existence of the fact, but..., the burden may shift to the adversary when the pleader has discharged [its] initial duty. The burden of producing evidence is a critical mechanism[.]

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced.

McKinstry, 428 Mich at 93-94, quoting McCormick, Evidence (3d ed), Sec. 336, p. 946.

The Department failed to present any evidence or relevant testimony to establish that it properly accounted for Petitioner's countable medical expenses or it properly determined his eligibility for ongoing FAP benefits.

Petitioner testified that his caseworker instructed him not to submit any receipts of his out of pocket medical expenses.

A complaint as to alleged misconduct or mistreatment by a state employee shall not be considered through the administrative hearing process but shall be referred to the department personnel director. Mich Admin Code, R 792.11002.

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 establishing that it acted in accordance with Department policy when it determined Petitioner's eligibility for ongoing Food Assistance Program (FAP) benefits.

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:

Allow Petitioner a 10 day period to submit out of pocket medical expenses, and initiate a determination of the Petitioner's eligibility for Food Assistance Program (FAP) effective October 1, 2017, and ongoing, in accordance with pollicy, and issue Petitioner any retroactive benefits he may be eligible to receive, if any.

KS/nr



Kevin Scully
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]