



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 22, 2018
MAHS Docket No.: 18-003791
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 May 16, 2018, from Lansing, Michigan. Petitioner represented herself. The Department of Health and Human Services was represented by [REDACTED], Office of the Inspector General.

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. Petitioner was a recipient of Food Assistance Program (FAP) benefits from [REDACTED], through [REDACTED]
2. On [REDACTED], the Department requested a disqualification hearing to establish that Petitioner was responsible for an Intentional Program Violation (IPV).
3. After due notice, a disqualification hearing was held on [REDACTED], and the hearing was held in Petitioner's absence pursuant to 7 CFR 273.16(3), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).
4. On [REDACTED], the Michigan Administrative Hearing System (MAHS) issued a decision finding Petitioner responsible for an Intentional Program Violation (IPV),

ordering the Department to recoup an overissuance of Food Assistance Program (FAP) benefits, and to disqualify Petitioner from FAP for 12 months.

5. Petitioner did not request reconsideration or a rehearing with respect to the [REDACTED], hearing decision.
6. On [REDACTED], the Department sent Petitioner an Intentional Program Violation Client Notice (DHS-4357) instructing her that her monthly allotment of Food Assistance Program (FAP) benefits would be reduced to \$ [REDACTED] due to her disqualification from FAP.
7. Petitioner has been disqualified from the Food Assistance Program (FAP) from [REDACTED], through [REDACTED], after being found responsible for an intentional program violation (IPV), although the members of her household that have not been disqualified remain potentially eligible to receive benefits.
8. On [REDACTED], the Department received Petitioner's request for a hearing.

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. The Michigan Administrative Hearing System (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 (April 1, 2018), pp 3-4.

On [REDACTED], the Department requested a hearing to establish that Petitioner was responsible for an IPV. On [REDACTED], a hearing was held without the participation of Petitioner pursuant to 7 CFR 273.16(3), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5). During this hearing, the Department's presented clear and convincing evidence that Petitioner had engaged in the trafficking of FAP benefits as defined in Department policy. The Department was ordered to recoup an overissuance of FAP benefits and disqualify Petitioner from the Food Assistance Program for a 12-month period.

That Petitioner was found responsible for an IPV involving FAP trafficking has been settled, and no evidence was presented on the record that Petitioner made a timely request for reconsideration or rehearing, or that she appealed the hearing decision in circuit court.

However, since Petitioner's benefit group remains active for FAP benefits despite her disqualification sanction, Petitioner retains the right to a hearing with respect to her current level of FAP benefits pursuant to BAM 600. The Department received Petitioner's request for a hearing on [REDACTED]. The Department failed to present any evidence supporting the determination of Petitioner's current level of FAP benefits. No witnesses with personal knowledge of Petitioner's eligibility for ongoing benefits testified, and no documentary evidence as to her ongoing eligibility for FAP benefits was entered into the hearing 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 eligibility for ongoing Food Assistance Program (FAP) benefits as of [REDACTED].

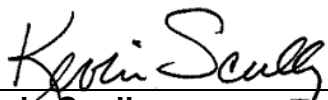
DECISION AND ORDER

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. Initiate a determination of the Petitioner's eligibility for the Food Assistance Program (FAP) as of [REDACTED], in accordance with policy with adequate notice to Petitioner.

KS/hb



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) 763-0155; 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]