



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: May 2, 2018  
MAHS Docket No.: 18-003134  
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, a telephone hearing was held on April 26, 2018, from Lansing, Michigan. Petitioner represented herself. The Department of Health and Human Services was represented by [REDACTED].

**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 [REDACTED], the Department received Petitioner's completed New Hire Client Notice. Exhibit A, p 6.
2. On [REDACTED], the Department sent Petitioner a Verification Checklist (DHS-3503) requesting verification of her earned income by [REDACTED]. Exhibit A, p 5.
3. On [REDACTED], the Department received Petitioner's Verification of Employment (DHS-38) form where she reported starting employment on [REDACTED] and expected to work 36 to 48 hours per week at a rate of \$ [REDACTED] per hour. Exhibit A, pp 11-12.

4. On [REDACTED], the Department received Petitioner's Change Report where she reported that her employment had ended. Exhibit A, pp 7-10.
5. On [REDACTED], the Department received Petitioner's signed statement reporting that her prior employment had ended as of [REDACTED]. Exhibit A, p 13.
6. On [REDACTED], the Department received Petitioner's request for a hearing complaining that the Department had not properly determined her eligibility for Food Assistance Program (FAP) benefits. Exhibit A, pp 2-3.

### **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 (January 1, 2018), pp 3-4.

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.

Petitioner is an ongoing FAP recipient. Respondent has reported that her employment at two businesses ended in 2018, while she was starting other employment. Some of the information Petitioner provided the Department was submitted late, while other information submitted in a timely manner was not processed correctly by the Department. On [REDACTED], the Department had not fully completed its assessment of Petitioner's eligibility for FAP benefits while awaiting further verification material from Petitioner. Presumably, this is the reason that a FAP net income budget was not supplied along with the Department's proposed exhibits.

Petitioner testified that she could not identify any particular error in the Department's determination of her FAP eligibility, but that what she wanted was a review of her case to assure that her eligibility for FAP benefits had been properly determined.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that there is insufficient information available for this Administrative Law Judge to accurately determine whether the Department has properly determined Petitioner's eligibility for FAP benefits. The Department has the burden of proving that it acted in accordance with policy, and based on the hearing record, the Department has failed to meet its burden.

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 current level of Food Assistance Program (FAP) benefits.

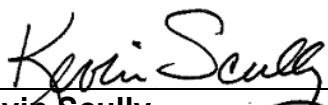
**DECISION AND ORDER**

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:

Initiate a determination of the Petitioner's eligibility for the Food Assistance Program (FAP) effective [REDACTED].

KS/hb

  
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**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]