



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: September 21, 2018
MAHS Docket No.: 18-008152
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 September 13, 2018, from Lansing, Michigan. Petitioner represented himself. The Department was represented by Swanzetta Wilson, Recoupment Specialist.

ISSUE

Did the Department of Health and Human Services (Department) properly determine Petitioner's eligibility for the Food Assistance Program (FAP)?

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 December 1, 2017, the Department requested a hearing to establish an Intentional Program Violation (IPV) against Petitioner.
2. On July 2, 2018, a disqualification hearing was held in Petitioner's absence under the authority of 7 CFR 273.16(e)(e)(i), which allows for such hearings to be held even when the hearing notice was not received.
3. On July 5, 2018, the Michigan Administrative Hearing System (MAHS) determined that the Department has presented clear and convincing that Petitioner was responsible for an Intentional Program Violation and the Department is entitled to recoup an overissuance of Food Assistance Program (FAP) benefits.

4. On July 17, 2018, the Department sent Petitioner an Intentional Program Violation Client Notice (DHS-4357) instructing him that he would be disqualified from receiving Food Assistance Program (FAP) benefits for 12 months.
5. On August 7, 2018, 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.

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

Federal regulations allow for an IPV decision to be vacated under certain circumstances.

Where an individual alleges non-receipt of the hearing notice, the good cause explanation must be received within 30 days of the written notice of the hearing decision. 7 CFR 273.16(e)(4).

Respondent failed to request that the hearing decision finding him responsible for an IPV be vacated in a timely manner, therefore, that decision can no longer be overturned or vacated. The Department's representative argues that Petitioner is therefore ineligible for FAP benefits due to his disqualification and is not entitled to protest his disqualification.

Petitioner alleges that he re-applied for FAP benefits and the Department's representative did not dispute that he submitted an application for FAP benefits. While Petitioner is no longer entitled to dispute the IPV sanction against him, he is entitled to apply for benefits. No evidence of Petitioner's application for assistance was presented on the record and no witnesses with personal knowledge of his application for assistance were available at the hearing to testify. The Department's representative only had personal knowledge of Petitioner's disqualification, which can no longer be

disputed. In her position as a recoupment specialist, the Department's representative had no personal knowledge of Petitioner's application for assistance.

A client is not precluded from filing an application for FAP benefits where the Department has previously disqualified that client from the FAP program. To the contrary, Department of Health and Human Services Bridges Administrative Manual (BAM) 110 (April 1, 2018), pp 20-21, clearly requires that the Department register all applications and written requests for assistance with sufficient identifying information. Once the application is processed, the Department is required to notify a client of the approval and/or denial of an application. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (October 1, 2014), p 2.

Since Petitioner is allowed to apply for FAP benefits and is potentially eligible to receive FAP benefits as a member of a household with other non-disqualified FAP recipients, Petitioner is entitled to a determination of his eligibility for FAP benefits. 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 received Petitioner's application for Food Assistance Program (FAP) benefits.

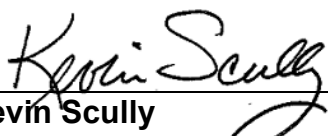
DECISION AND ORDER

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) as of July 1, 2018.

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

Denise McCoggle
27260 Plymouth Rd
Redford, MI 48239

Wayne County (District 15), DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Policy-Recoupment via electronic mail

DHHS Department Rep.

MDHHS-Recoupment
235 S Grand Ave
Suite 1011
Lansing, MI 48909

Petitioner

[REDACTED]
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[REDACTED], MI [REDACTED]