



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: March 7, 2019
MAHS Docket No.: 19-001162
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on March 6, 2019, from Detroit, Michigan. The Petitioner was represented by his parents, [REDACTED] (Father) and [REDACTED] (Mother), as authorized by a Durable Power of Attorney giving them the authority to help make legal decisions and signs contracts on his behalf as well as helping him to make other decisions which would assist him, effective July 15, 2011. The Department of Health and Human Services (Department) was represented by Aundra Jones, Hearings Facilitator, and Richkelle Curney, Hearings Facilitator.

ISSUE

Did the Department properly close Petitioner's 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 an ongoing FAP recipient.
2. On September 4, 2018, the Department issued a Redetermination to Petitioner's address of record with a due date and scheduled interview of October 1, 2018.
3. On September 15, 2018, Mother placed the completed Redetermination in the self-addressed prepaid envelope included in the original mailing from the Department in the mail to be sent back to the Department; she also included a note on the final

page that Petitioner was unavailable for the scheduled interview due to a doctor's appointment.

4. By October 1, 2018, the Department had not received a completed Redetermination from Petitioner; therefore, a Notice of Missed Interview was mailed to Petitioner's address of record informing him that he had the responsibility to reschedule the interview before October 31, 2018, otherwise his redetermination would be denied.
5. Effective November 1, 2018, Petitioner's FAP benefit automatically closed because the Redetermination had not been received and an interview was not completed.
6. On January 2, 2019, Mother requested a hearing on behalf of Petitioner disputing the closure of Petitioner's 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.

In this case, Mother requested a hearing on Petitioner's behalf disputing the Department's closure of Petitioner's FAP benefits effective November 1, 2018.

At the hearing, a question arose as to whether Mother and/or Father could represent Petitioner at the hearing. While Mother is an Authorized Representative (AR) with the Department, it was unclear whether she was an Authorized Hearings Representative (AHR).

An AR is a person who makes application or provides eligibility information on behalf of a client. BPG Glossary (July 2018), p. 7. In FAP cases, this person can access food assistance benefits on behalf of a client. *Id.*

An AHR is a person who stands in for or represents the Department's client in the hearing process and has the legal right to do so. BPG Glossary, p. 7. The legal right to represent the client comes from one of the following sources:

- Written authorization, signed by the client, giving the person authority to act for the client in the hearing process.
- Court appointment as a guardian or conservator.
- The representative's status as legal parent of a minor child.
- The representative's status as attorney at law for the client.
- For Medical Assistance (MA) Program only, the representative's status as the client's spouse, or the deceased client's widow or widower, only when no one else has the authority to represent the client's interest in the hearing process.

Id.

In this case, Petitioner's parents have not been granted a Guardianship or Conservatorship of Petitioner by a court. However, the Petitioner executed a letter on July 15, 2011, which specifically provides Father, or Mother in Father's absence, the authority to help make legal decisions, sign contracts, sign papers needed for services or benefits, and help make decisions to assist Petitioner. Given the language of this letter, Mother had the right to request a hearing on Petitioner's behalf and Mother and Father can represent Petitioner in the hearing.

Turning to the issue of the closure of benefits because the Redetermination process had not been completed, policy provides that Redeterminations are the process through which an individual's program eligibility is reviewed. BAM 210 (January 2018), p. 1. The Department issues a Redetermination packet to the client three days prior to the negative action cut-off date in the month before the redetermination is due. BAM 210, p. 19. This allows time to process the Redetermination before the end of the Redetermination month. *Id.* When Redetermination packets are sent to clients, the packet includes the following items:

- Redetermination form
- Notice of review as determined by policy
- Interview date
- Interview type
- Place and time
- Required verifications
- Due date
- Return envelope

BAM 210, p. 9.

If a Redetermination is not received completed by the Department, the FAP group or client loses their right to uninterrupted FAP benefits. BAM 210, p. 21.

The Department complied with these requirements and mailed a Redetermination packet to Petitioner's address of record with the return envelope. Mother completed the Redetermination, placed it in the envelope provided, and put it in her mailbox for regular

pickup. Since Petitioner used the envelope provided by the Department, it was already self-addressed with prepaid postage. The Department did not receive the completed Redetermination and closed Petitioner's case. No evidence was presented of any returned mail to Petitioner nor was there any evidence of problems with the receipt of mail by the Department. Since the envelope was self-addressed with prepaid postage to the Department, the error or problem was not on the part of Mother, but somewhere else in the chain of custody. The proper mailing and addressing of a letter creates a presumption of receipt which may be rebutted by evidence. *Stacey v Sankovich*, 173 NW2d 225 688 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 241 NW2d 71 (1976); *Long-Bell Lumber Co v Nynam*, 108 NW 1019 (1906). The only evidence presented by the Department to dispute the presumption of receipt was its testimony indicating that it was not received. No evidence was presented regarding the processes for handling incoming mail nor was there evidence that some other problem occurred. Therefore, the Redetermination is presumed to be received by the Department and closure of the FAP case was not in accordance with policy.

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 closed Petitioner's FAP case, effective November 1, 2018.

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. Reinstate and redetermine Petitioner's FAP eligibility effective November 1, 2018;
2. If Petitioner is otherwise eligible, issue supplements to Petitioner in accordance with Department policy effective November 1, 2018; and,
3. Notify Petitioner in writing of its decision.

AMTM/jaf



Amanda M. T. Marler
Administrative Law Judge
for Robert Gordon, 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

Jeanenne Broadnax
MDHHS-Wayne-18-Hearings

DHHS

Tara Roland 82-17
MDHHS-Wayne-17-Hearings

Petitioner

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Petitioner

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