

Appellant: [REDACTED]
For: Minnesota Supplemental Aid
Special Diet
Agency: [REDACTED] County
Docket: 237435

**DECISION OF
STATE AGENCY
ON APPEAL**

On September 16, 2020, Human Services Judge Kathleen McDonough held a hearing under Minnesota Statutes, section 256.045, subdivision 3.¹

The following people appeared at the hearing:

[REDACTED], Appellant

[REDACTED], [REDACTED] County

The human services judge, based on the evidence in the record and considering the arguments of the parties, recommends the following Findings of Fact, Conclusions of Law, and Order.

¹The Minnesota Department of Human Services conducts state fair hearings pursuant to Minnesota Statutes, section 256.045, subdivision 3. The Department also conducts maltreatment and disqualification hearings on behalf of the Minnesota Departments of Health and Education pursuant to Minnesota Statutes, sections 626.556, subdivision 10j; and 626.557, subdivision 9d.

STATEMENT OF ISSUES

The issue raised in this appeal is:

Whether [REDACTED] County (agency) correctly determined that [REDACTED] (appellant) was eligible for an MSA special need diet effective August 1, 2020.

Recommended Decision:

REVERSE the agency and approve eligibility for MSA special diet effective July 1, 2020.

PROCEDURAL HISTORY

1. On July 31, 2020, the agency sent appellant a notice that she was eligible for an MSA grant of \$589 effective August 1, 2020. *Agency Exhibit 3, 7/31/2020 notice*. On August 19, 2020, appellant filed an appeal stating “due to COVID, my [REDACTED] County worker “reinstated my old doctor form but [REDACTED] County refused to accept the documentation.” My need for a special diet started in March 2016.” *Exhibit 1*.

2. On September 16, 2020, the Human Services Judge held an evidentiary hearing on the matter by telephone. The Judge held the record open to receive from the county copies of eligibility notices sent to appellant, letter from appellant’s doctor and case notes. The record closed at the end of the day on September 16, 2020 consisting of the hearing testimony and four exhibits.²

FINDINGS OF FACT

1. Appellant has received MSA benefits since February 1, 2020. *Exhibit 3, [REDACTED] County MSA eligibility notice dated March 26, 2020*.

2. On May 1 2020, appellant moved from [REDACTED] County to [REDACTED] County. *Appellant’s Testimony and Exhibit 3, case notes*.

3. On June 10, 2020, [REDACTED] County transferred appellant’s case to [REDACTED] County. *[REDACTED] Testimony and Exhibit 3, 6/10/20 case notes*.

4. On June 15, 2020, appellant called [REDACTED] County and stated she submitted a change report form to [REDACTED] County. *Exhibit 3, 6/15/20 case notes*. Worker responded “I don’t know because I don’t have anything.” Worker told appellant to call [REDACTED] County

² Exhibit 1 – Appeal request; Exhibit 2- State Agency Appeal Summary and Attachments; Exhibit 3 – copies of case notes and notices sent to appellant; Exhibit 4 – 9/16/2020 email to Judge.

and have them submit to me.” *Id.* On June 17, 2020, worker noted “[REDACTED] County sent the documents to the client and she can send them to us.” *Exhibit 3, 6/17/20 case notes.*

5. On June 23, 2020, appellant called [REDACTED] County and said she emailed documents. Appellant said she should be getting MSA increase for May and June. Worker explained [REDACTED] County did not get case until June. Appellant said she could not get shelter form to [REDACTED] County because of COVID. Worker told appellant to call [REDACTED] County because “I can only answer for what I receive.” *Exhibit 3, 6/23/20 case notes.*

6. On July 21, 2020, appellant told her worker she did not want to talk to her and asked to speak to a supervisor. *Exhibit 3, 7/21/20 case notes.*

7. On July 23, 2020, appellant called her worker and stated she should be getting an MSA special diet supplement. Appellant said she thought she was getting MSA special diet supplement in [REDACTED] County. The [REDACTED] County worker said [REDACTED] County did not approve MSA special diet benefits. Appellant indicated she would call [REDACTED] County and have them fax special diet verification to [REDACTED] County. Worker gave appellant the fax number. *Exhibit 3, 7/23/20 case notes.*

8. On July 27, 2020, appellant provided [REDACTED] County with a statement from her doctor saying she has type 2 diabetes and requires a special diet of high protein, high residue and hypoglycemic diet. [REDACTED] *Testimony and Exhibit 2, 7/27/2020 letter from appellant’s doctor.* The doctor’s letter stated appellant has required a special diet since 3/2016. *Id.* Worker confirmed that [REDACTED] County had verification that appellant qualified for MSA special diet on 4/18/2016 when appellant lived in [REDACTED] County. *9/16/2020 email to Judge.*

9. Effective August 1, 2020, [REDACTED] County approved a \$116.40 special needs diet supplement to appellant’s MSA benefits as follows:

- High Protein - \$48.50
- High Residue - \$38.80
- Hypoglycemic - \$29.10

[REDACTED] *Testimony and Exhibit 2.*

10. At the hearing, appellant said she was treated very rudely and lied to by her worker and that she made a discrimination complaint. She requested a different worker. Appellant stated she has a disability and did not want to talk anymore because she was very anxious and upset. *Appellant’s Testimony.*

APPLICABLE LAW

Jurisdiction

1. The Commissioner of Human Services has jurisdiction over appeals involving matters listed in Minnesota Statutes, section 256.045, subdivision 3(a).

2. Unless federal or Minnesota law specifies a different time frame in which to file an appeal, an individual or organization specified in this section may contest the specified action by submitting a written request for a hearing to the state agency within 30 days after receiving written notice of the action or within 90 days of such written notice if the person shows good cause why the request was not submitted within the 30 day time limit. *Minn. Stat. § 256.045, subd. 3(i)*. The individual filing the appeal has the burden of proving good cause by a preponderance of the evidence. *Id.*

3. Tolling provisions that could extend the time limit for filing an appeal beyond ninety days do not apply to statutorily created deadlines unless the statute itself contains a clause stating that general tolling statutes or other exceptions apply. *See, Whitener ex rel Miller v. Dahl, 625 N.W.2d 827, 829 (Minn. 2001)*. Because Minnesota Statute, Section 256.045 contains no such language, the Commissioner of the Minnesota Department of Human Services is barred from considering any appeal filed more than ninety days after a notice of action is received, no matter the reason for the delay in filing the appeal. (Emphasis added).

4. ***Burden of Proof.*** In an administrative appeal, the burden of proof is governed by the state or federal laws that apply to the hearing. *Minn. Stat. §256.0451, subd. 17*. When there is no specific law, the party who seeks a certain action must prove the facts at issue by a preponderance of the evidence. The "preponderance of the evidence" means, in light of the record as a whole, the evidence leads the human services judge to believe that the finding of fact is more likely to be true than not true. *Minn. Stat. § 256.0451, subd. 22*. The human services judge's recommended order must be based on all relevant evidence, including hearsay. *Minn. Stat. § 256.045, subd. 5*. The judge is free to determine witness credibility and reject testimony as lacking credibility. *Zahler v. Minn. Dept. of Human Services, 624 N.W. 2d 297, 303 (Minn. App. 2001)*.

Minnesota Supplemental Aid (MSA)

5. A person who is receiving supplemental security income (SSI) benefits under Title XVI is eligible for a payment under the MSA program, if the person's net income is less than the standards in section 256D.44. *Minn. Stat. § 256D.425, subd. 1*. The SSI benefit rate minus a \$20 disregard is considered the unit's unearned income when determining the amount of

the MSA grant. *Minn. Stat. § 256D.435, subds. 1 and 5, Combined Manual (CM) § 29.06.03.*³ The state standards of assistance for basic needs, plus special need items establish the total amount of need for MSA. *Minn. Stat. § 256D.44, subd. 1.*

6. The MSA monthly assistance standard for a household one is \$783. *Combined Manual § 20.21.* 5. The MSA Housing Assistance Allowance is \$392 per month. *CM § 23.24.*

7. **MSA Special Diet.** A special need allowance for a special diet may be paid to MSA clients who are not residents of a nursing home, regional treatment center or group residential facility. Add an amount for special diet requirements to the monthly assistance standard. A licensed physician, advanced practice registered nurse or physician assistant must prescribe the special diet. Verify the need at each recertification. The eligible diet amounts are:

- High Residue Diet - \$38.80
- Hypoglycemic – \$29.10
- High Protein - \$48.50

CM § 23.12.

8. The amount of the first grant of MSA awarded to an applicant must be computed to cover the time period starting with the first day of the month in which the county received the signed and dated application or the first day of the month in which all eligibility factors were met, whichever is later. *Minn. Stat. § 256D.395.*

Moving Between Counties

9. When a participant moves between counties, the county of financial responsibility at the time of the move remains responsible until the participant lives in the new county for 2 full calendar months. *CM § 6.06.*

10. **Verifications.** When non-public information for proof is needed, clients must get documents themselves or give you written permission to contact 3rd parties. When a client cooperates but an adequate source of proof is not available, the worker should work with the client to find the best available information. Get a signed statement from the client attesting to the correctness of the information. Do not deny benefits because the agency cannot get proof if the client has made all reasonable efforts. *CM § 10.03.*

³ Available online at https://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=cm_00290603#.

CONCLUSIONS OF LAW

1. On March 26, 2020, ██████ County sent appellant an MSA eligibility notice. Appellant filed an appeal on August 19, 2020, 145 days after the notice was sent. Thus, the Judge does not have jurisdiction to review ██████ County's decision regarding appellant's eligibility for an MSA special diet supplement. An appeal filed after 90 days is not timely no matter what the reason for the delay.

2. The appeal to ██████ County is timely and the Commissioner of Human Services has jurisdiction over this appeal under Minnesota Statutes, section 256.045, subdivision 3.

3. Appellant moved to ██████ County in May 2020 and ██████ County transferred the case to ██████ County on June 10, 2020. On June 15, 2020, appellant contacted ██████ County. Based on the testimony at the hearing and case notes, appellant was attempting to cooperate with the process of getting her case transferred. She telephoned ██████ County number of times and spoke to her worker and communicated with ██████ County. In her appeal, appellant stated that, due to COVID, her ██████ County worker "reinstated her old doctor form but ██████ County refused to accept the documentation." On June 23, 2020, appellant told her ██████ County worker she believed her MSA should be increased. On July 23, 2020, appellant told the ██████ County worker she should be getting an MSA special diet supplement and she thought she was getting one in ██████ County. Clearly, appellant was struggling with obtaining necessary documentation. At no time, did the ██████ County worker attempt to assist appellant with obtaining verifications. Finally, on July 27, 2020, appellant was able to provide verification that she is eligible for a special diet supplement due to type 2 diabetes and has been eligible since March 2016. Subsequently, it was verified that ██████ County had documentation in appellant's file showing appellant was eligible for a special diet supplement in April 2016. The Combined Manual states "When a client cooperates but an adequate source of proof is not available, the worker should work with the client to find the best available information." The worker can get a signed statement from the client attesting to the correctness of the information and should not deny benefits because the agency cannot get proof if the client has made all reasonable efforts. Had the ██████ County worker assisted appellant in June when she called and said her MSA should be increased it was possible to get a signed stated from appellant that she was eligible for a special diet and to follow that up later by getting a current doctor's statement. Thus, based on a totality of the circumstances, I find there is a preponderance of evidence that appellant was eligible for an MSA special diet supplement in July 2020 when ██████ County became responsible for appellant's case.

RECOMMENDED ORDER

Based on all of the evidence, I recommend that the Commissioner of Human Services:
REVERSE [REDACTED] County's determination that appellant was eligible for an MSA special diet supplement on August 1, 2020 and find appellant was eligible for \$116.40 for an MSA special diet supplement on July 1, 2020.

Kathleen McDonough

Kathleen McDonough
Human Services Judge

September 17, 2020

Date

ORDER

On behalf of the Commissioner of Human Services and for the reasons stated above, I adopt the recommended Findings of Fact, Conclusions of Law, and Recommended Order as the final decision of the Department of Human Services.

Amy Lynne Hermansik

Co-Chief Human Services Judge

9/18/2020

Date

cc: [REDACTED], Appellant
[REDACTED] County, [REDACTED]
DHS - [REDACTED]

FURTHER APPEAL RIGHTS

This decision is final unless you take further action.

Appellants who disagree with this decision should consider seeking legal counsel to identify further legal action. If you disagree with this decision, you may:

- **Request the appeal be reconsidered.** The request must state the reasons why you believe your appeal should be reconsidered. The request may include legal arguments and may include proposed additional evidence supporting the request. If you propose additional evidence, you must explain why the evidence was not provided at the hearing. **The request must be in writing and be made within 30 days of the date this decision was issued by the co-chief human services judge.** You can mail the request to: Appeals Division, Minnesota Department of Human Services, P.O. Box 64941, St. Paul, MN 55164-0941. You can also fax the request to (651) 431-7523. **You must send a copy of the request to the other parties.** To ensure timely processing of your request, please include the name of the human services judge assigned to your appeal and the docket number. The law that describes this process is Minnesota Statutes, section 256.0451, subdivision 24.
- **Start an appeal in the district court.** This is a separate legal proceeding that you must start **within 30 days of the date this decision was issued by the co-chief human services judge.** You start this proceeding by: 1) serving a written copy of a notice of appeal upon the Commissioner of Human Services and upon any other adverse party of record; and 2) filing the original notice and proof of service with the court administrator of the county district court. The law that describes this process is Minnesota Statutes, section 256.045, subdivision 7.⁴

⁴ County agencies do not have the option of appealing decisions about Supplemental Nutrition Assistance Program (SNAP), Minnesota Family Investment Program (MFIP), or Diversionary Work Program (DWP) benefits to district court under 7 Code of Federal Regulations, section 273.15(q)(2), and Minnesota Statutes, section 256J.40. A prepaid health plan may not appeal this order under Minnesota Statutes, section 256.045, subdivision 7.