

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED]

Claimant

Reg. No: 2009-18985

Issue No: 3023

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

May 19, 2009

Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on May 19, 2009.

ISSUE

Was the claimant's application for replacement of food destroyed in a fire properly denied?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) Claimant was a Food Assistance Program (FAP) recipient in Genesee County.
- (2) In December, 2008, claimant had an FAP redetermination.
- (3) It was determined that claimant had excess income for continued FAP eligibility, and the FAP benefits were set to expire on 12-31-08.

(4) On 12-23-08, claimant and his family were the victims of a house fire, which destroyed all the food in their house.

(5) On 12-26-08, claimant contacted DHS and requested that the food that had been bought with the food stamps be replaced, per PAM 502.

(6) On 12-29-08, a DHS-3503 was sent to the claimant with instructions to return a DHS-601, Food Replacement Affidavit, along with a list of all destroyed food that had been purchased by the FAP allotment.

(7) On 1-7-09, claimant returned the forms and the lists of food.

(8) This claim was not processed until 2-27-09.

(9) When claimant's worker tried to process the request, she was told by the system that replacement was impossible because claimant had no FAP eligibility.

(10) Food can only be replaced under the provisions of PAM 502 up to the value of "the current month's allotment".

(11) Because claimant was no longer eligible for FAP, his allotment in "the current month" was considered to be zero, and replacement was denied.

(12) The Standards of Promptness on FAP benefit replacement processing is 10 days from the date of the request, or 2 days after the signed DHS-601 is returned; in this case, that date would be 1-9-09 at the very latest.

(13) It is unknown why DHS did not process this request for almost two months.

(14) Claimant's caseworker then tried to process the claim under the State Emergency Relief program.

(15) SER food replacement can only take place if the claimant was not eligible for FAP benefits in the "current month".

(16) Claimant's caseworker considered "the current month" to be the date of application, December 2008, and therefore denied the replacement.

(17) On 3-24-09, claimant requested a hearing on the matter, alleging that he was eligible for the food replacement benefits.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. Department of Human Services (DHS or department) policies are found in the State Emergency Relief Manual (SER).

Food Assistance Program recipients may be issued a replacement of food that has been reported destroyed in a domestic misfortune or disaster. Domestic misfortunes or disasters include events which occur through no fault of the client, such as fires, floods or electrical outages. These events must be verified through a collateral contact, a community agency, utility company or a home visit. PAM 502.

Replacements and reauthorizations are processed **only** if the claimant reports the loss within 10 days. The Department must process the request within 10 days of the request, or within 2 working days of receipt of the signed DHS-601, whichever is later. PAM 502.

Upon application processing, the Department must replace the amount the client states they have lost up to the value of the current month's allotment. The food replaced does not have to come from the current month; however the client must complete the DHS-601, Food Replacement Affidavit form describing the loss. Replacement cannot exceed the current month's benefit. PAM 502.

State Emergency Relief food issuances work in a different manner. SER provides assistance to replace food within 60 days from the date of a fire, civil disorder, or natural/chemical disaster, prevent children from being removed from the home or to allow children to return to the home. ERM 305.

SER Food Replacement may be issued only if the need results from an event beyond the group's control and the group was not eligible for Food Assistance Program (FAP) benefits in the current month. SER may be issued for a maximum of 15 days or the shortest period of time that meets the SER group's needs. The daily food allowance is \$1.50 per day per SER group member. The daily allowance for restaurant food is \$3.00 per day per SER group member. The Department must first examine eligibility for food benefit replacement under PAM 502 before issuing SER to replace food that was lost in a domestic misfortune or disaster. ERM 305.

Claimant was denied replacement food benefits under both programs. While initially processed under PAM 502, claimant was denied when claimant's caseworker attempted to authorize the food replacement two months after the application in the CIMS system; the system returned back an error message stating that claimant was not an open FAP case and therefore, could not be eligible for FAP replacement.

PAM 502 states that authorization must be allowed for FAP benefits up to the benefit allotment of “the current month”. Claimant was denied under PAM 502 because in “the current month”—February 2009, when the application was processed—claimant’s allotment was zero.

However, when the Department tried to determine eligibility under ERM 305, a different standard was used; the Department’s rationale for the denial of State Emergency relief was that the claimant was an FAP recipient in “the current month”—December 2008, the time of the initial application—and therefore ineligible for SER food benefits per the manual item.

The Department offered no explanation as to why claimant’s request took 49 days longer to process than is allowed by the standards of promptness.

The Department seems to be suffering from a flaw in its decision making logic. Both manual items use the term “current month”, and both use the term in a similar manner when referring to the FAP allotments and benefits. PAM 502 states that benefits must be replaced “up to the value of the current month’s allotment.” ERM 305 states that replacements can only be offered if the “group was not eligible for Food Assistance Program (FAP) benefits in the current month.” Both items refer to “the current month” as a definitive period of time that is intended to define under what program claimant is eligible for.

The undersigned can think of no reason that the term should not have the same meaning in each manual item when determining whether to process the claimant for food replacement; in fact, assigning different meanings to the same term would yield unjust results quite outside the spirit of the Program Reference Manuals, creating situations (such as the one here), where a person would not be eligible for assistance under any program through no fault of his own. Yet inexplicably, the Department ascribed two different meanings to the term when it processed claimant’s case. When processing the benefits under PAM 502, the term “current month” was used to mean the date the application was processed; when processing benefits under ERM 305,

the term suddenly changed its meaning to be used as the date the application was made. Clearly, the Department may not have it both ways; one definition must win out and be used consistently.

Furthermore, regardless of which definition is used, when a consistent definition is applied, claimant becomes eligible for food replacement under one of the two programs for sure: if “current month” is held to mean the month of the application, claimant is eligible for benefits under PAM 502. If “current month” is held to mean the month the application was processed, claimant is clearly eligible for benefits under ERM 305. The question therefore, becomes not whether claimant is eligible for food replacement, but under which program must claimant be approved?

The manuals themselves shed some light on the subject. ERM 305 clearly states that the claimant must first be evaluated under PAM 502 for food replacement, so all attention should be focused on that item first. Furthermore, the language of ERM 305 contemplates a client that is not on FAP benefits at the time of the disaster, and needs immediate assistance replacing their food and eating at the time of the disaster—in other words, simple survival of a disaster.

PAM 502, on the other hand, contemplates the replacement of food purchased with FAP benefits. Rather than survival, this item’s focus is more on the replacement of food benefits lawfully issued and spent, that were lost through no fault of the claimant’s.

While it is true that claimant did need serious assistance immediately following the fire, the main issue is more analogous to the latter situation: claimant was issued FAP benefits lawfully for the amount of December, the benefits were transformed into food, as intended by the program, and those benefits were lost through no fault of the claimant. Additionally, ERM 305 directs us to analyze claimant under PAM 502 first, and it appears that claimant fits the situation contemplated by this item.

Furthermore, applying a “current month” standard for when the application is actually processed would leave an applicant for this program at the mercy of a caseworker. Benefit levels rise and fall frequently; should a caseworker delay processing beyond the standards of promptness, as happened here, the caseworker could effectively reduce program benefits on their own actions. The opposite is also true; a different claimant may actually receive more benefit replacement if the caseworker holds off processing until after benefit levels have risen.

The entire point of PAM 502 is to replace food that has been purchased using the month in question’s FAP allotment—no more, and no less. Using a different month’s FAP allotment to determine what needs to be replaced is both arbitrary and capricious.

Therefore, the Administrative Law Judge holds that “current month”, as used in PAM 502 and ERM 305 is defined as the month in which the claimant applied for benefits.

Furthermore, under this analysis, claimant would thus qualify for food replacement assistance under PAM 502, as the Department has admitted that claimant met all other qualifications for replacement under this item.

As claimant followed all the policies as outlined in PAM 502, has submitted verifications, and otherwise followed all the processes contained therein for food replacement, the Department was in error when it did not replace the food purchased using his December, 2008 benefit allotment.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department’s decision to deny claimant’s request for food replacement under PAM 502 was incorrect.

Accordingly, the Department’s decision in the above matter is, hereby, **REVERSED**.

The Department is ORDERED to immediately issue replacement food benefits for the food lost by claimant in the fire that had been purchased using FAP allotments, up to amount of claimant's December, 2008 FAP allotment.

/s/

Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 4, 2009

Date Mailed: June 4, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

RJC/cv

cc:

[REDACTED]