

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: 2009-30075
Issue No: 3012
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 1, 2009
Kent 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 September 1, 2009.

ISSUE

Should the claimant's allocation have been raised for the month of June when claimant reported an income change in May?

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 receiving a Food Assistance Program (FAP) allotment budget of \$98.
- (2) In early May, claimant notified the Department of underemployment at her current job.

- (3) On May 26, 2009, claimant was sent a DHS-3503, requesting verification of employment; claimant was also sent a DHS-38, Verification of Employment.
- (4) Claimant was given a due date for these forms of June 5, 2009.
- (5) Claimant turned in the DHS-38 before June 5, 2009.
- (6) The DHS-38 did not reflect any underemployment.
- (7) Claimant also attached copies of her work schedule.
- (8) The work schedule showed that claimant was working, at most 6 hours or so per week.
- (9) These changes were not processed.
- (10) On June 22, 2009, claimant once again contacted the DHS with regard to the underemployment.
- (11) DHS subsequently sent claimant another verification checklist and verification of employment.
- (12) On June 26, 2009, DHS received these verifications and ran a budget.
- (13) This new budget increased claimant's FAP allotment to \$517.
- (14) This new budget was effective July 1, 2009.
- (15) Claimant filed for hearing on July 9, 2009, alleging although DHS correctly computed her budget, this budget should have been effective as of June, 2009, and claimant was entitled to supplemental benefits for that month.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Claimant stated at the hearing that because she reported her underemployment in May, she felt that her FAP budget should have been allocated to a higher amount for the month of June. BAM 220 states:

“You must act on a change reported by means other than a tape match within 10 days after you are aware of the change.

Benefit Increases: Changes which result in an increase in the household’s benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date.”

In the current case, claimant testified that she first reported the change in question in early May. The evidence in the case seems to support that statement; claimant was sent a verification checklist on May 26, 2009. The Department was unable to testify as to exactly when claimant first reported the change, and the undersigned finds it credible that claimant would report a change and not have request for verification sent until much later; the Department is admittedly overworked and has recently, due to budget cuts, been unable to process all changes in a timely manner. Therefore, the undersigned finds that the claimant did report the change more than 10 days before the month of June, therefore making the first allotment date 10 days after reported change to be the June allotment date. Thus, provided the claimant gave the Department verifications confirming the hours reduction, an adjustment to the June allotment would be required by policy.

On May 29, 2009, claimant’s employer signed a DHS-38 stating that claimant was working 30-40 hours per pay period (or 15-20 hours per week) at \$10/hour. Department Exhibit 7. The Department acknowledged that this verification was turned in timely. Unfortunately, this

verification alone does not show underemployment; claimant had previously been working at this level, and the verification shows no change. Had this verification been the sole proof claimant provided, the Department would have been correct in denying the benefit increase for the month of June.

However, this is not claimant's sole verification; claimant also provided a copy of her work schedule. Claimant testified that this schedule was turned into the Department at the same time this verification was turned in; the Department denied this. However, given the claimant's difficulty in getting the Department to send her a verification checklist in the first place, the Department's reputation for misplacing documentation, and the claimant's propensity for taking notes and providing due diligence, the undersigned finds that the claimant was credible when she testified that the work schedule was turned in to the Department.

The Department argued that this verification was unacceptable and that policy does not allow for a work schedule to be provided as verification of work hours; this is not true. BEM 500 states, in relevant part, that the following is allowable as verification of income:

“Copy of work schedule made by the employer and provided by the client, when the rate of pay is known.”

BEM 500 specifically allows for a copy of a work schedule to be used as an acceptable verification. The rate of pay is known; there was no, and had never been, any dispute of claimant's pay rate of \$10/hour. Therefore, the work schedule should have been taken into account.

After examining the work schedule, it appears that the schedule is in clear conflict with the DHS-38. After consideration, the undersigned finds the work schedule a far more reliable source of information. The DHS-38 is more akin to employer testimony; the work schedule is a business record. In the current case, a business record is giving clear lie to the testimony of the

employer. Given that the work schedule clearly shows that the claimant had had her hours severely reduced, the undersigned finds that the testimony of the employer, contained within the DHS-38, is simply not credible. Thus, the Department was incorrect when it relied upon the DHS-38 and ignored the work schedule. The Department should have used the work schedule in determining whether or not claimant was underemployed.

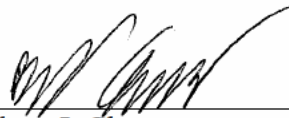
The Department did eventually increase claimant's benefits in response to her underemployment, and this action was correct. However, the evidence of record shows that claimant reported the change in time to affect her benefits one month earlier than was actually processed. Therefore, the Department should supplement claimant's benefit amount one month earlier than the original change date.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's was in error when it did not increase claimant's FAP allotment in June. Claimant is therefore entitled to an increase in FAP benefits for the month of June, 2009.

Accordingly, the Department's decision is REVERSED.

The Department is ordered to retroactively apply the FAP benefit increase claimant received in July, 2009, to the month of June 2009.



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

Date Signed: 12/22/09

Date Mailed: 01/06/10

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/dj

cc:

