

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████,

Claimant

Reg. No. 2009-31991

2009-32601

Issue No. 4003, 5000,

3052, 3002

Case No. ██████████

Load No. ██████████

Hearing Date:

September 10, 2009

Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

This matter is before the undersigned Administrative Law Judge upon pursuant to MCL 400.9; MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on September 10, 2009. The claimant appeared and testified. ██████████, claimant's friend was also present. Egrid Daniels, AP Supervisor and Timothy Franko, ES, appeared on behalf of the department.

ISSUES

- 1) Did the department properly deny claimant's State Disability Assistance (SDA) application for failure to provide requested verification?
- 2) Did the department properly process claimant's State Emergency Relief (SER) applications?
- 3) Is the department's recoupment of the overissuance of Food Assistance Program (FAP) benefits correct?

4) Is claimant receiving the correct monthly Food Assistance Program (FAP) allotment?

FINDINGS OF FACT

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

SDA

1. Claimant lived with and provided care for [REDACTED], a disabled adult from October 2008 through June 2009.
2. On February 10, 2009 claimant applied for SDA benefits. (Department Exhibit 3 pg. 22)
3. On February 10, 2009 a DHS 54-A Medical Needs form regarding [REDACTED] was submitted to the department's Macomb County, Sterling Heights district office. (Department Exhibit 3 pg. 39)
4. On March 19, 2009 the Sterling Heights office faxed the DHS 54-A to the Warren district office. (Department Exhibit 3 pg. 38)
5. On June 4, 2009 the Department issued a Benefit Notice indicating that claimant's SDA benefits would end on June 16, 2009 because claimant failed to provide a current DHS 54-A. (Department Exhibit 2 pgs. 12-13)
6. Claimant filed a hearing request on June 15, 2009 to contest the SDA determination.

SER

7. Claimant filed multiple applications for SER benefits between October 2008 and the date of the hearing.

8. The department denied an SER application on May 27, 2009 and claimant filed a hearing request to contest the SER denial on June 15, 2009. (Department Exhibit 1 pg. 1)
9. The department has since approved SER benefits retroactive to October 2008.

FAP recoupment

10. Claimant and [REDACTED] received FAP benefits as a household of 2 persons beginning in October 2008 based on claimant's statement that the purchased and prepared food together.
11. [REDACTED] later filed a separate benefit application indicating he did not purchase and prepare food with claimant.
12. The department initiated a recoupment for the overissuance of benefits on claimant's FAP case for the months of October 2008 through May 2009. (Department Exhibit 2 pgs. 2-3)
13. The department reduced claimant's June 2009 FAP allotment by \$20 for the recoupment.
14. On June 15, 2009 claimant filed a hearing request to contest the recoupment.
15. On July 2, 2009 department issued a notice to claimant that the recoupment for the overissuance of FAP benefits was withdrawn. (Department Exhibit 2 pg. 1)

FAP amount of allotment

16. Claimant is an ongoing recipient of FAP benefits.
17. Claimant received income from SDA benefits and earned income as a chore service provider.
18. Claimant testified she no longer receives the chore services provider income.
19. Claimant had obligations for shelter and utility expenses.

20. On May 22, 2009 the department recalculated claimant's FAP budget reducing the group size to 1 due to [REDACTED] statement and determined that claimant is entitled to \$200 in FAP benefits per month. Department Exhibit 2 pp. 9-10.
21. Claimant requested a hearing contesting the amount of the FAP grant.

CONCLUSIONS OF LAW

SDA

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (DHS or department) administers the SDA program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3151-400.3180. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference manual (PRM).

Under PAM 105, clients must cooperate with the local office in determining initial and ongoing eligibility. A caretaker of a disabled person may receive SDA provided that the assistance of the caretaker is medically necessary for at least 90 days and the caretaker and the disabled person live together. PEM 261. Policy requires a statement by a M.D. or D.O. that the client is needed in the home to provide personal care to the disabled household member for at least 90 days. The statement must include the diagnosis as well as the length of time care is needed, and department form DHS-54A, Medical Needs, may be used. PEM 261.

The department is to allow 10 days to provide the verification requested and a negative action notice is to be sent when the client indicates refusal to provide a verification or the time period given has elapsed and the client has not made a reasonable effort to provide it. PAM 130. The department must also help clients who need and request assistance in obtaining verifications, and may extend the time limit, if necessary. PAM 130.

In the present case, claimant was receiving SDA benefits as a caretaker for [REDACTED], a disabled adult who was living in claimant's home. The only proof of a written request for verifications was dated in December 2008. (Department Exhibit 3 pg. 18) This requested appears to relate to an October 23, 2008 application which was denied on December 26, 2008. (Department Exhibit 3 pgs. 1-21)

However, claimant reapplied for SDA benefits on February 10, 2009 and the negative action at issue is the June 16, 2009 closure for failure to provide a current DHS 54-A. (Department Exhibit 3 pg. 22 and Department Exhibit 2 pgs. 12-13) On February 10, 2009, the department received a DHS 54-A regarding [REDACTED]. (Department Exhibit 3 pg. 39) This form was faxed from the department's Sterling Heights office to the Warren office on March 19, 2009. (Department Exhibit 3 pg. 38) The department has not provided any evidence that a more current DHS 54-A form was requested after the February 10, 2009 application for SDA benefits was filed.

Based upon the foregoing facts and relevant law, it is found that the Department erred in closing the SDA benefits effective June 16, 2009 for failure to provide a current DHS 54-A. The department did have the February 2009 DHS 54-A and presented no evidence that a more recent form was requested from claimant. Therefore, the department shall reinstate the SDA benefits retroactive to the June 16, 2009 closure date through July 1, 2009, when [REDACTED] moved out of claimant's home.

SER

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. The Department

of Human Services' [formally known as the Family Independence Agency] policies are found in the State Emergency Relief Manual ("ERM").

State Emergency Relief ("SER") prevents serious harm to individuals and families by assisting applicants with safe, decent, affordable housing and other essential needs when an emergency situation arises. ERM 101, p. 1. Low-income households who meet eligibility requirements may receive assistance to help them meet their household heat and electric costs. ERM 301, p. 1. Payments are authorized when the group's heating or electric service for their current residence is, or will be, shut off, or when payment is necessary to restore services. ERM 301, p.1.

The regulations governing hearing and appeals for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code. MAC R 400.901-.951. MAC R 400.903 reads in part: an opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by a department action resulting in suspension, reduction, discontinuance, or termination of assistance.

In the present case, claimant filed multiple applications for SER between October 2008 and the date of the hearing. Claimant's June 15, 2009 hearing request was based upon a May 27, 2009 denial of SER benefits.

The department, however, testified that SER benefits have since been approved and will go all the way back to October 2008. Claimant agreed there was no longer an unresolved issue regarding the SER benefits. Therefore, the department has not currently taken a negative action or failed to act in a timely manner regarding benefits or services to the claimant. The issue raised in claimants SER hearing request has been resolved.

Therefore, this hearing is dismissed regarding the SER issue pursuant to MAC R 400.903(1). PAM 600.

FAP

The Food Assistance Program, 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”), formally known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Program Administrative Manual (“PAM”), the Program Eligibility Manual (“PEM”), and the Program Reference Manual (“PRM”).

Recoupment

Persons who live together and purchase and prepare food together are members of the FAP group. PEM 212. The number of persons in the FAP group along with the calculated monthly net income, is used to determine the amount of the FAP allotment. RFT 250. Under PAM 700, when a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance. PAM 700.

In the present case, claimant and [REDACTED] received FAP benefits as a household of 2 persons beginning October 2008. [REDACTED] later filed a separate benefit application indicating he did not purchase and prepare food with claimant. The department recalculated the budgets for the months of October 2008 to May 2009 and determined there had been an overissuance of FAP benefits in the amount of \$1141. (Department Exhibit 2 pgs. 2-3) The department initiated a recoupment for the overissuance of benefits on claimant’s FAP case. The department testified that claimant’s June 2009 FAP benefits were reduced by \$20 for the recoupment.

However, the department has since withdrawn the recoupment because there is no way to determine who was telling the truth for the past months. (July 2, 2009 Hearing Summary) The department issued notice to claimant on July 2, 2009 that the recoupment has been withdrawn.

The department has reversed their own FAP overissuance determination. Accordingly, the department shall supplement claimant's FAP benefits in the amount of \$20 for the recoupment deducted from the June 2009 allotment before the recoupment was withdrawn.

Amount of Allotment

Persons who live together and purchase and prepare food together are members of the FAP group. PEM 212. The federal regulations define household income to include gross wages from employment and unearned income such as SDA benefits. 7 CFR 273.9(b). Only 80% of earned income is counted in determining FAP benefits. PEM 550. Stable income received two weeks is multiplied by 2.15 to take into account fluctuations due to the number of scheduled pays in a month. PEM 505. Under PEM 550 and RFT 255, \$135 is deducted from the gross income of FAP recipients in determining FAP grants for a group of 3 or less. Under 7 CFR 273.9 deductions for excess shelter expenses are also made when shelter expenses in excess of 50 percent of the household's income after other specified deductions have been allowed.

In the present case, the department recalculated claimants FAP budget on May 22, 2009 reducing the group size to 1 due to the application [REDACTED] filed indicating he did not purchase and prepare food with claimant. As noted above, the department withdrew the recoupment on claimants case as it found there is no way to determine who was truthful about whether claimant and [REDACTED] purchased and prepared food together. [REDACTED] did not move out until July 1, 2009.

Additionally, the May 22, 2009 budget included SDA income and the claimant's earnings as a chore service provider based on a March 5, 2009 pay date. (Department Exhibit 2 pg. 10)

The department closed the SDA benefits in June 2009 and claimant testified she was no longer receiving the chore service provider income.

Based upon the foregoing facts and relevant law, it is found that the department did not correctly determine the monthly FAP allotment for the budget effective June 2009 and ongoing. [REDACTED] resided with claimant through the entire month of June 2009. Additionally, income was budgeted for claimant that she testified she was no longer receiving. Accordingly, the department shall verify claimant's income from June 2009 to present and re-determine FAP eligibility retroactive to June 2009.

DECISION AND ORDER

The ALJ, based upon the findings of fact and conclusions of law, decides that:

SDA

The department has provided no evidence that a more current DHS 54-A form was requested from claimant. Accordingly, the SDA determination to close the SDA benefits for failure to submit a current DHS 54-A form is REVERSED.

Therefore it is ORDERED that the department reinstate the SDA benefits retroactive to the June 16, 2009 closure date and award benefits to claimant until July 1, 2009, when [REDACTED] moved out of claimant's home.

SER

There is no longer an unresolved issue regarding SER benefits. Therefore, this hearing is DISMISSED regarding the SER issue pursuant to MAC R 400.903(1). PAM 600.

FAP Recoupment

The department has reversed its own FAP overissuance determination and withdrawn the recoupment on claimant's FAP case.

Therefore it is ORDERED that the department supplement claimant's FAP benefits for the \$20 her FAP benefits were reduced in June 2009 for recoupment.

FAP Allotment

Claimant is not receiving the correct monthly FAP allotment and it is ordered that the Department's decision in this regard be and is hereby REVERSED.

Therefore it is ORDERED that the department verify claimant's income since June 2009 and re-determine eligibility for FAP benefits retroactive to June 2009, awarding benefits to claimant, if appropriate, in accordance with this decision.

Colleen Lack
Colleen Lack
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 10/05/09

Date Mailed: 10/06/09

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 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

CL/dj

cc:

[REDACTED]