

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: 2009-7319

Issue No: 2006; 3008

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 4, 2009

Wayne 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 March 4, 2009.

ISSUES

- (1) Should the claimant have had her FAP allotment cancelled completely due to a failure to return verifications from her grandson?
- (2) Should the grandson have had his Medicaid insurance cancelled due to a failure to return these same verifications?

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 amount of [REDACTED]

(2) Claimant's grandson was receiving Medicaid.

(3) Claimant's FAP and MA allotments were determined under the assumption that claimant's grandchildren were members of the home.

(4) Claimant's grandson had been attending college at [REDACTED] for over a year.

(5) Claimant reported a change in income for her grandson resulting from a job her grandson took on campus.

(6) DHS requested pay stubs from this job to verify income for the grandson.

(7) Claimant did not turn in the pay stubs.

(8) DHS subsequently cut off claimant from all FAP allotments and Medicaid over the failure to provide verifications.

(9) Claimant filed a new DHS-1171, Assistance Application on 12-12-08, where she stated that she lived alone.

(10) Claimant filed a hearing request on 12-12-08, alleging that she should still be receiving all 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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM) and Reference Tables (RFT).

When determining eligibility for FAP benefits, the household's total income must be evaluated. All earned and unearned income of each household member must be included unless specifically excluded. PEM, Item 500. A standard deduction from income of \$135 is allowed for each household. Certain non-reimbursable medical expenses above \$35 a month may be deducted for senior/disabled/veteran group members. Another deduction from income is provided if monthly shelter costs are in excess of 50% of the household's income after all of the other deductions have been allowed, up to a maximum of \$300 for non-senior/disabled/veteran households. PEM, Items 500 and 554; RFT 255; 7 CFR 273.2.

However, income can only be included in a budget if the income comes from a member of the FAP group. Likewise, an individual must be a member of the FAP group in order to be considered for an FAP allotment. PEM 212. In order to be a member of the FAP group, a member must live with the other group members and must have food purchased and prepared with the other group members. A member who is temporarily absent, which is generally defined as having a known location and a definite plan for return to the group within 30 days is still considered a member of the group. PEM 212.

For Medicaid, only a person living with another can be considered in the same group. PEM 211. A temporary absence is considered under the same general rules as stated above for the FAP program.

In this case, claimant argues that the FAP benefits should never have been cut off, because claimant was never told that she had to return the requested verifications. As proof, claimant points to the verifications checklist she was given. This list, which was confirmed by the Department, though not included in the evidence, apparently shows that DHS never requested the pay stubs. The Department counters that Department Exhibit 4, the DHS-4635A, clearly shows that pay stubs are to be returned to DHS. Both of these arguments are missing the central point: *claimant's grandson was not a member of the FAP group.*

There is no stretch of the regulations that can be read to have a person living hundreds of miles away at college for most of the year be part of an FAP group. The issue of the verifications becomes irrelevant; the Department should not have requested the grandson's employment information, but only because claimant should not have been receiving an FAP allotment as if her grandson was living with her. The Department was in error, but not for the reason alleged by the claimant: when the Department became aware of the situation, they should not have cut off claimant's FAP allotment entirely, but instead should have re-evaluated the claimant for the appropriate group size.

The same logic holds for the claimant's grandson's Medicaid; however, we reach a different result. Because the claimant's grandson was not part of the group in question, the Department should have sent a negative action notice to the grandson, not the claimant. It was his Medicaid that was in question, not the claimants, and the claimant had no right to request an appeal on behalf of her grandson, absent notice in writing that she was his authorized

representative. Likewise, this Administrative Law Judge has no jurisdiction to decide whether the claimant's grandson was properly cut off from the Medicaid Program. Should the claimant's grandson wish for this issue to be decided, he must appeal the negative action notice, once it is sent.

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 cut off the claimant's FAP allotment entirely was incorrect. The Administrative Law Judge has no jurisdiction to decide whether or not claimant's grandson was properly cut-off from Medicaid. However, the Department was in error when it did not send him a negative action notice and move him to his own case.

Accordingly, the Department's decision is REVERSED.

The Department is ORDERED to evaluate claimant's FAP allotment for the months in question by using a corrected group size, and restore claimant's FAP benefits to an amount consistent with the Program Eligibility Manuals. Furthermore, the Department is ORDERED to transfer claimant's grandson to his own case, send him a negative action notice based upon the cut-off of his Medicaid benefits.

/s/

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

Date Signed: March 17, 2009

Date Mailed: March 18, 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]