

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: 2009-10757

Issue No: 3008

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 11, 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 March 11, 2009.

ISSUE

Was the claimant's FAP allotment cut off properly for failure to return requested 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 budget of [REDACTED]

- (2) On 12-05-08, claimant filed a DHS-1171, Assistance Application for an annual review.

(3) Claimant alleged on this application that claimant's boyfriend, [REDACTED] was now living with her and had self-employment income.

(4) On 12-05-08, claimant was sent a DHS-3503, Verification Checklist, which requested, among other things, records of self-employment income for [REDACTED]

(5) The checklist was due on 12-15-08.

(6) Claimant subsequently returned all requested documents, except for the records of self-employment. Claimant instead returned an unemployment check stub for [REDACTED]

(7) DHS proceeded to run an Unemployment Application Inquiry, which showed that [REDACTED] had been receiving unemployment benefits since November 2008.

(8) DHS attempted to call claimant twice to resolve the discrepancy between the DHS-1171 and the claimant's returned verifications and confirmed unemployment benefits, but did not get an answer either time, and no answering machine picked up.

(9) On 12-30-08, 25 days after the DHS-1171 was returned, DHS sent a DHS-176, Benefit Notice, notifying claimant that her FAP allotment would be cut-off, effective 12-31-08, for failure to provide self-employment information for [REDACTED]

(10) On 01-06-08, claimant filed a request for hearing, alleging that her caseworker had a conflict of interest (due to caseworker's involvement in a criminal case against claimant), and that claimant had never been notified as to which documents and verifications were missing to determine eligibility.

#### 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).

A DHS-1171, Assistance Application must be completed when eligibility is re-determined. An application is considered incomplete until it contains enough information to determine eligibility. PEM 115. If there are discrepancies between the information given in the application and information provided from another source that could hamper an eligibility determination, a client must be given a reasonable opportunity to resolve the discrepancy. PEM 130, p. 5. An application that remains incomplete, due to a discrepancy or otherwise, may be denied; however, PEM 115 states that:

“You **cannot** deny an application due to incompleteness until 10 calendar days from the **later** of:

- Your initial request **in writing** to the applicant to complete the application form or supply missing information.
- The initial scheduled interview”

In the current case, it is undeniable the claimant made several errors which contributed to the current situation she finds herself in. Claimant testified at hearing, and the Department did not rebut, that claimant put down “self-employment” for [REDACTED] out of ignorance of his true source of income. When claimant found out the true source, claimant did not notify the Department of the situation, but instead simply sent the unemployment stubs to her case worker in the belief that the Department would figure out the situation on their own, even after being notified that the Department was waiting for verifications on [REDACTED] non-existent self-employment income. The Department was quite correct in its initial assertion that they were unable to determine eligibility for the claimant based on the information they had, when it was

possible that the claimant had some self-employment income as well. The undersigned agrees that the discrepancy in the information that the Department had up to that point made an eligibility determination impossible, and that the claimant was the cause of this problem, especially considering that a simple note explaining her mistake on the DHS-1171, sent in with the verification checklist, could have avoided all subsequent problems.

Unfortunately for the Department, the correct test is not whether the claimant made mistakes, but rather, whether the Department took the proper action at the time, given the information it had in its possession at the time of the action.

PAM 130 requires that a client be given a reasonable opportunity to resolve a discrepancy between a client's statements and outside information (in this case, the claimant's own unemployment stubs and the Unemployment Benefit Inquiry). We must ask therefore ask two things, in order to determine if the Department took the proper action at the time given the information it had. First, whether or not the Department was aware of the discrepancy. Second, whether or not the Department gave the claimant a reasonable opportunity to resolve the discrepancy. The undersigned believes the answer to both these questions is no.

It is apparent that the Department was aware of the discrepancy. Department Exhibit 1, the Hearing Summary, states that the attempts were made to contact the client to "clear up the discrepancy". At the hearing, the Department testified that they were unsure as to whether the unemployment stubs meant that the [REDACTED] was receiving unemployment and self-employment, one, or neither, and admitted to being confused by the situation. At the very least, the Department felt there was a need to contact the claimant to explain the situation—in other words, the Department felt that more verification was needed. Had the Department not followed up, or closed the case after not receiving any self-employment verification, the question of the

Department's awareness would be murkier. However, from testimony and actions, it appears that the Department was well aware of the discrepancy.

We must then ask whether the Department gave the claimant a reasonable opportunity to resolve the discrepancy, as required by PEM 130. An application is only complete when there is enough information to determine eligibility. PEM 115. The discrepancy in the claimant's application prevented the Department from determining eligibility; therefore, the application was incomplete. PEM 115 requires that the Department notify the claimant in writing if information is missing; once the notification is sent out, the claimant has 10 days to supply the missing information, or the application may be properly denied. The application was incomplete due to missing information, which was the source of the discrepancy. Therefore, it follows that the Department should have notified the claimant in writing of this discrepancy, and the claimant needed to supply the information necessary to resolve the discrepancy.

The Department did not do this; it simply called the claimant twice and closed the case when there was no answer. If the Department did not know, or realize there was a discrepancy, a different outcome would be called for; the information that it had at the time would lead to a correct action of a denial.

However, the Department did know about the discrepancy. They knew there was a problem, and something was not correct. Simply put, they knew they needed more verification, even to the extent of calling the claimant to provide these verifications. As such, at the moment the Department acquired this knowledge, they were required to notify the claimant in writing of the need for verification, to give the claimant a chance to resolve the discrepancy. Therefore, the Department did not provide claimant a reasonable opportunity to resolve the discrepancy, and was in error.

However, there is an argument that the Department notified the claimant of the problem when they sent the DHS-176, Benefit Notice, to the claimant on 12-30-08. Leaving aside the problem that this notice does not contain any reference to the discrepancy, there is still the problem that this notice denies the application and closes benefits on 12-31-08, one day later. This is not the 10 days required by PEM 115. In fact, given the speed of mail delivery around the holidays it was conceivable that the claimant would not have even received this notice until after her case had already closed. If we take this form as the written notice required by PEM 115, claimant had until at least 01-08-08 to resolve the problems in her application. Using this situation that is most favorable to the Department, it becomes obvious that had the Department been willing to simply talk to the claimant at the time she filed her hearing request, claimant would have been within the time period required to supply the missing information (in this case, that [REDACTED] was not receiving self-employment income, and that she had made a mistake on her application), and the hearing could have been avoided.

Furthermore, the undersigned is swayed by the fact that, when all was said and done, the Department *had* all the information necessary to make a determination; the Department was simply unaware that they had all the information, and thought that there may have been more out there. Because the Department knew of the existence of the discrepancy, it was therefore under a duty to make a reasonable attempt to inform the claimant of this discrepancy.

#### 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 was in error.

Accordingly, the Department's decision in the above-stated matter is, hereby,  
REVERSED.

The Department is ORDERED to restore claimant's FAP benefits retroactive to the negative action date, and process claimant's review application using the corrected information contained in the claimant's case file.

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

Date Signed: March 19, 2009

Date Mailed: March 20, 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:

