

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: 2009-23419

Issue No: 2006; 3008

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 25, 2009

Gratiot County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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 telephone hearing was held on June 25, 2009. The claimant appeared via telephone conference call and testified.

ISSUE

Did the department properly terminate the claimant's Food Assistance Program (FAP) benefits and Medical Assistance (MA) benefits for failure to turn in verifications for the claimant's redetermination in May, 2009?

FINDINGS OF FACT

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

1. The claimant's case became due for a redetermination in April, 2009. The claimant was mailed a Redetermination Form (DHS-1010) on March 19, 2009. This form scheduled an in-person interview with the claimant on April 3, 2009. (Department Exhibit 8 - 9).

2. No in-person interview was conducted with the claimant. No telephone interview or in-home interview was conducted in place of the in-person interview.

3. The claimant received no notification that the department was not going to conduct an interview with her.

4. The claimant mailed in the Redetermination form when she didn't hear back from the department regarding the interview. The department received the Redetermination form on April 23, 2009. On this form, the claimant reported she was employed at [REDACTED] and worked 80 hours each pay period, making \$608.00. The claimant also reported that she had a land contract, but that she hadn't been paid any of the monthly payments in the past month. (Department Exhibit 8 – 9).

5. The claimant turned in bank statements, telephone bills, electric/gas bills, water bills, a copy of the title to her vehicle and paycheck stubs with her Redetermination form. The paycheck stubs covered the periods of 1/28/09 – 2/10/09; 2/11/09 – 2/24/09; and 3/25/09 – 4/7/09. (Department Exhibit 10 – 21).

6. The department closed the claimant's FAP and MA case on May 1, 2009, because the claimant "refused to return the redetermination form mailed or given to you for this purpose." (Department Exhibit 4 – 7).

7. The claimant's hearing request was received on May 18, 2009.

CONCLUSIONS OF LAW

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).

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).

Bridges policy BAM 210 governs redeterminations. This policy indicates that a DHS-1010, Redetermination Form will be sent to the claimant and will include the interview place and time and a list indicating what verifications are required. (BAM 210, pp. 7 – 8). Department policy indicates that an “in-person interview is required at redetermination unless an in-person interview can be waived. See BAM 115, Waiver of In-Person Interview”. (BAM 210, p. 8) BAM 115 states that an in-person interview can be waived and “replaced with a telephone interview or home visit if one of the following conditions is met....” These conditions include the group consisting of SDV members with no income or a household hardship situation. There is an exception to this rule that indicates “[c]onduct an in-person interview if the client requests one.” (BAM 115, p. 13)

Ms. Sanchez, the Eligibility Specialist, testified that she conducted no interview with the claimant. She further testified that she had “waived the interview.” When asked if the claimant was notified of the department’s “waiver” of her interview, Ms. Sanchez testified that she had not notified her of this.

The Redetermination Form clearly indicated that an in-person interview would be conducted and was scheduled for April 3, 2009. The claimant testified that she called the department to reschedule as she would be at work and never heard back from the department. The claimant testified that instead of any telephone call about the appointment, she received a second notice of appointment for April 13, 2009, but that it was scheduled for the morning, so she called and requested the appointment in the afternoon. The claimant testified that she received no return call from the department and no further interviews were scheduled for her.

Department policy, first and foremost, indicates that the department must hold an in-person interview if the client requests it. The claimant testified that she called the department several times about her in-person interview and requested it be held in the afternoon so it wouldn't interfere with her work schedule. Ms. Sanchez admitted in her testimony that she had received telephone calls regarding the interview from the claimant and also admitted that she never called her back. In this case, the claimant indicated her intent to the department to have an in-person interview, therefore, department policy required Ms. Sanchez to conduct the in-person interview.

However, even if the claimant had not requested an in-person interview, Ms. Sanchez could not just "waive" the interview. The department policy quoted above indicates that if an in-person interview is waived, a telephone interview or in-home interview must be conducted instead. Ms. Sanchez admitted in her testimony that no interview was conducted with the claimant.

BAM 210, pp. 9 – 10, indicates that a department staff member must "do **all** the following during the interview:

- Obtain a completed DHS-1010 from the client.

- Compare the DHS-1010 to the existing DHS-1171 or previous DHS-1010 and other case data.
- Reconcile any discrepancies on the DHS-1010, and have the client complete anything omitted.
- Review the verifications and reconcile any discrepancies.”

Ms. Sanchez admitted in her testimony that had she conducted the interview, the claimant would have known what additional verification was needed and would have had the opportunity to provide it to the department.

When the claimant did not hear anything further about her in-person interview, she mailed in the Redetermination Form and her verifications on April 23, 2009. The department’s position is that the claimant didn’t turn in all of the necessary verifications. The department contends that the claimant failed to turn in 30 days of income and 90 days of her land contract payments. Mr. Hale, a Family Independence Manager, testified that the claimant’s land contract was self-employment (SE) income, so she was required to turn in 90 days of the payment history. However, this is not supported by policy. BEM 500 indicates that “rental income” is included in self-employment income. (BEM 500, p. 13) This same policy defines “rental income” as “money a person (landlord) received for allowing another person (renter) to use the landlord’s property. It includes income from a lease.” (BEM 500, p. 28) Payments received from a land contract are not rent. In fact, department policy has a separate section for “sale of property in installments” and directs the department to treat the sale of real property in installments (**land contract**) as unearned income. (BEM 500, p. 32) Thus, the department was clearly in error to suggest that the claimant was required to provide 90 days of land contract payments because it was SE income. The claimant did provide information for the previous 30 days by indicating that she hadn’t been receiving the land contract payments for the last couple of months.

However, even if the department didn't accept the claimant's statement that she hadn't been paid the amount for the last couple of months, they already had verification of the amount and the frequency of the income, so they could have budgeted the monthly amount into her FAP or MA budget.

The department's next argument was that the claimant didn't provide the previous 30 days of income to the department. The claimant provided check stubs for the following pay periods: 1/28/09 – 2/10/09; 2/11/09 – 2/24/09; 3/25/09 – 4/7/09. The department points out that the claimant did not provide the paycheck stub for the pay periods of 2/25/09 – 3/10/09 and 3/11/09 – 3/24/09. However, the claimant reported on her Redetermination Form that she works 80 hours every pay period and earns \$608 every pay period. Further, if one looks at the claimant's last paycheck for the pay period of 3/25/09 – 4/7/09, it is easy to figure out that the claimant was working straight 40 hour weeks. The claimant's year-to-date (YTD) earnings were \$4256. Her YTD earnings from the previously provided check (2/11/09 – 2/24/09) showed \$3040. Thus, the claimant had to have earned \$1216 in the two pay periods that were not provided. The claimant makes \$7.60 per hour. Dividing \$1216 by \$7.60 would equal the amount of hours she worked in both pay periods and it equals 160 hours. Thus, it is clear that the claimant worked regular 40 hours weeks each week at \$304 per week. Even if the department worker had just glanced at the current pay on each paycheck, each of them clearly indicates 40 hour weeks at \$304 per week. Thus, the department could clearly have budgeted the proper amount from the information the claimant provided.

However, even if the department didn't want to take the time to figure these amounts out, the department could have issued the claimant a DHS-3503 Verification Checklist to request additional information. Mr. Hale testified that the department no longer has to issue any Verification Checklists for redeterminations. However, Mr. Hale did testify that the department

could issue Verification Checklists. In fact, BAM 210, p. 11, the policy that governs redeterminations, states that “[v]erifications must be provided by the end of the current benefit period or within 10 days after they are requested, whichever allows more time. You must help clients who need and request assistance in obtaining verifications, and you may extend the time limit, if necessary. See BAM 130.” Since this policy refers the reader to BAM 130, it is necessary to look at this policy to construe policy information about verifications. Under the section titled “obtaining verification”, BAM 130 p. 2 states “[t]ell the client what verification is required, how to obtain it, and the due date....Use the DHS-3503, Verification Checklist...to request verification.” Thus, it appears that Mr. Hale’s contention that Bridges no longer uses the Verification Checklist to obtain required verifications, is inaccurate.

Further, if ever there was a situation to use a Verification Checklist, it would appear to be the instant case. The department failed to provide the claimant with the required interview. When the claimant makes the attempt to provide the proper forms and verifications, the department simply chooses to close the claimant’s FAP and MA case, instead of giving her the opportunity to provide further information or resolve any discrepancies, which is required by policy.

This Administrative Law Judge finds that the department had all the necessary information to be able to accurately budget the claimant’s FAP and MA case and should not have closed the claimant’s FAP and MA case. Further, even if the department needed additional information, the department failed to hold the redetermination interview which is required by policy. This interview would have given the claimant the opportunity to be told what additional information was needed. As the department failed to hold the interview as required by policy, the department failed to give the claimant any notice of what further information was required.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly terminated the claimant's FAP and MA benefits in May, 2009.

Accordingly, the department's actions are REVERSED. The department shall:

1. Re-open the claimant's FAP and MA case back to the date of closure, May 1, 2009.
2. Issue the claimant any retroactive benefits the claimant is entitled to.
3. Hold an interview with the claimant to obtain any further verification, if necessary.

/s/

Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 27, 2009

Date Mailed: July 29, 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 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.

SL [REDACTED]

cc: [REDACTED]