

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: 2009-34593
Issue No: 1005
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
October 18, 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 October 8, 2009.

ISSUE

Did the Department of Human Services (DHS) correctly deny claimant's FIP application for a failure to pursue other benefits?

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 applied for FIP benefits in Wayne County.
- (2) Claimant applied for benefits during her FAP re-determination on July 2, 2009.
- (3) Claimant's caseworker did not notice claimant had applied for FIP benefits until August 8, 2009, and claimant's FIP request was not processed until that day.

- (4) On August 17, 2009, after the 45 day standards of promptness had run, the Department assessed claimant's eligibility for FIP.
- (5) Claimant's FIP application was allegedly denied; however no evidence was presented to show that claimant was sent a denial notice.
- (6) No date has been offered to show when claimant's FIP application was denied.
- (7) Claimant's FIP application was allegedly denied because claimant had failed to pursue "potential benefits such as social security for disabled spouse and accident benefits. Also the customer did not apply for unemployment benefits. Additionally, the customer provided an accident report showing a potential lawsuit for benefits that this writer is awaiting verification due by 9/08/2009".
- (8) No evidence was submitted to document these allegations.
- (9) Claimant is a school employee and is contractually forbidden from pursuing unemployment benefits. This evidence was submitted to the Department.
- (10) Claimant's husband had been in a car accident in [REDACTED].
- (11) Claimant's husband had been told that he could return to work in [REDACTED].
- (12) Claimant was requesting FIP benefits for a two month period in July and August while she was temporarily laid off from the school.
- (13) The Department's hearing packet consisted of 3 exhibits, one of which was the hearing summary, one of which was an unfilled out DCH-1354 (given to the claimant on September 1, 2009, after the claimant had requested a hearing), and one was a benefit summary screen that showed a benefit period for FIP of September 1, 2009 to September 30, 2009, which was a period after the period claimant had requested FIP benefits for.

- (14) On August 25, 2009, claimant requested a hearing, based upon a verbal statement that her FIP application had been denied, and a lack of progress on her case application.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

BEM 270 states that a FIP program group member who refuses to pursue a potential benefit renders the entire group ineligible. Potential benefits are defined as RSDI, SSI, Worker's Compensation, VA benefits, Railroad Retirement benefits, UCB benefits, child support, or those benefits defined under the section "other potential benefits", which include, but are not limited to, disability or retirement benefits. More importantly for the current case, BEM 270 does not state that money stemming from a possible win of a potential lawsuit is a "benefit" that must be pursued.

A client's statement at application, re-determination or change that she has applied for the benefit or that she is not eligible is to be accepted unless the statement is unclear, inconsistent or in conflict with other information. BEM 270.

The Department argues that the claimant refused to pursue potential benefits as is required by BEM 270 and therefore had her FIP application denied. Under normal

circumstances, the undersigned would examine the relevant evidence provided by each side of the case and make a determination, using that evidence, as to whether the Department correctly applied policy with regards to the claimant's application. However, these are not normal circumstances. During the course of the hearing, the Department submitted three exhibits: Exhibit 1 consisted of the hearing summary; Exhibit 2 was a summary of benefits that listed that claimant's FIP application was denied due to a failure to pursue benefits; Exhibit 3 was a DCH-1354, Third Party Liability Casualty Insurance Information, that was given to the claimant on September 1, 2009, after claimant's case had been denied, thus making it irrelevant to the current action. No other evidence was offered. For that reason, the undersigned is unable to examine the relevant evidence, because there is no relevant evidence to be examined.

Furthermore, when asked about additional evidence, the Department stated that there was no further evidence with regards to its case. The Department was of the opinion that Exhibit 2, the Benefit Summary, was enough to prove that claimant failed to pursue benefits. The Department did not seem to grasp the fact that this exhibit was merely a statement of why the claimant was denied—and a statement cannot be used to prove itself. The Department could not offer anything but its own credibility that the claimant had failed to pursue benefits.

The Administrative Law Judge is unable to take the Department at face value in the current case, and finds the Department's own actions leave them with no credibility to spare.

Claimant applied for FIP benefits on July 2, 2009. No action was taken on this case through the month of July. On July 29, 2009, claimant had an appointment with her caseworker, who had not realized that claimant had applied for FIP benefits. Claimant was told by her caseworker that she was somehow unable to process claimant's application—despite being claimant's caseworker and ostensibly responsible for that sort of thing—and that her application

would be forwarded to a cash assistance worker. Despite the fact that claimant's application had been filed on July 2 and 27 days of the 45 day Standards of Promptness had passed, claimant's caseworker did not pass this application to the appropriate person on that day, or the next day, or even the next. Claimant's case worker did not pass claimant's FIP application to the appropriate eligibility specialist for *twelve* more days, almost two weeks after claimant had been verbally notified that her caseworker was either unwilling or unable to process the application, and 39 days after claimant first applied. When questioned as to why there was such a delay, the Department testified that claimant had applied during an FAP re-determination and the Department had not expected claimant to apply for FIP, because the application was not filed at the front desk of the DHS office, where people normally file FIP applications. When asked if this meant that claimant's caseworker had not read the application, the Department admitted that this was probably the case.

Despite running close to the standards of promptness, the Department delayed the processing of claimant's case for *another week*, until August 17, 2009, which put them over the 45 day standards of promptness to process an FIP application. At this time, claimant's FIP application was allegedly denied, though the Administrative Law Judge cannot determine that with any great degree of certainty, because the Department representatives were unable to locate an actual denial that had been sent to the claimant, and were unable to provide an actual date of negative action. Claimant applied for the hearing based on a verbal denial from her original caseworker.

Coupled with the fact that Department representatives cited policy items that are completely irrelevant to the current case (the Administrative Law Judge, while finding BEM 550—FAP Income Budgeting extremely interesting, does not see how it applies to an FIP case)

or non-existent (there is no BEM 130), while failing to cite policy items that actually are relevant (such as BEM 270—Pursuit of Benefits), the undersigned determines that the Department has no credibility whatsoever in the current case. The Administrative Law Judge finds that the Department's word that claimant failed to pursue benefits to be utterly worthless.

Therefore, the Administrative Law Judge rules that the Department has completely failed to meet their burden of proof in proving that claimant failed to pursue other benefits, as required by BEM 270. No evidence has been offered to support the Department's claims. No documentary evidence was provided. The Department's case packet consisted of 4 pages, one of which was the hearing summary, and one of which was a document given to the claimant after she had filed for hearing on the Department's alleged denial. Therefore, the Department submitted exactly one piece of actual evidence, a piece of evidence which does not even begin to address the foundation of the Department's claims, and merely shows why the claimant's application was denied. The undersigned would also note that no evidence was presented that claimant was provided proper notice. For these reasons, the undersigned must hold that the Department has not proven their case, in any way, shape, or form. The Department has, however, succeeded in wasting the time of all involved.

The Administrative Law Judge is under no burden to remind the Department of what is needed to prove their case, and will not argue the Department's case for them. If the Department fails to submit adequate evidence, the Administrative Law Judge will rule on the evidence that has been provided. In the current case, almost no evidence has been provided. Therefore, the undersigned must rule that the Department's action was in error.

Furthermore, even if we were to accept for a moment, that the Department had presented evidence that the claimant had failed to pursue benefits, the Department, based upon their own testimony, showed a gross misapplication of the policy in BEM 270.

BEM 270 specifically instructs that the Department is to accept a claimant's statement that she has applied for all eligible benefits or is ineligible at face value unless the statement is unclear, or somehow inconsistent with other information. The Department has provided no evidence that this was the case, documentary or otherwise. Even if the undersigned believed that this was the case, the benefits that the Department argued that the claimant had not pursued were not benefits that claimant could have pursued, as a matter of fact.

According to the Department's hearing summary, claimant had failed to pursue "social security for disabled spouse". Assuming that the Department is talking about SSI benefits, the undersigned would point out that BEM 270 states, with regard to SSI benefits:

However, do not deny eligibility to an FIP Applicant or Recipient unless MRT has determined that they meet MA-P disability standard. BEM 270, pg 2.

Claimant's husband had never been sent to MRT—of course, this is unsurprising, given that claimant's husband, according to claimant and medical records that the Department admitted were in its possession, was scheduled to return to work in August or September, and would not meet the legal standard of disability, which requires a disability lasting at least 12 months. This 12 month durational requirement is contained directly in the text of BEM 270, so the Department had no excuse for failing to be aware of it, and thus, know that claimant's husband was ineligible for SSI. If the Department was talking about RSDI, the exact same durational requirements arise. Thus, if the Department had truly denied claimant's FIP application for failing to pursue Social Security Disability benefits, the Department would be grossly misapplying its own policy,

as nothing in BEM 270 can be construed to read that claimant has to pursue benefits she is clearly ineligible for.

The Department also argued that claimant had not applied for unemployment benefits; while this might normally disqualify a claimant for FIP, it should be noted that claimant responded that she was contractually ineligible for UCB benefits as a condition of her employment with her school, and had provided the Department with this information. While the Department had not provided this information, they did admit that they were aware of this clause. Once more, nothing in BEM 270 states that a claimant must pursue benefits that she is ineligible for.

The Department also stated that claimant “provided an accident report showing a potential lawsuit for benefits”. During the hearing, this was brought up to support the Department’s contention that claimant’s failure to file this lawsuit constituted a failure to pursue benefits.

The Administrative Law Judge must admit that he is stunned by the audacity of this contention, which is so completely unsupported in policy as to make the undersigned question where the Department came up with it.

First, there is nothing of any sort in the policy that states that a client must file a lawsuit to be eligible for benefits. BEM 270 does not list “potential lawsuits” as benefits that must be pursued. A potential lawsuit cannot be considered a benefit—there are many good reasons why a person may choose to not file a lawsuit, and the Department should not be in the practice of judging when a claimant must file one.

Secondly, the undersigned is at a loss to determine how exactly the Department arrived at the idea that the claimant had good cause to file a lawsuit stemming from her husband’s accident,

much less determined that the claimant has a lawsuit with enough winning potential to justify an argument that claimant had failed to pursue benefits. The Department has presented no evidence that it keeps a staff of qualified personal injury attorneys on hand.

Third, even if the Department was referring to BEM 257—Third Party Resource Liability, the undersigned notes that the purpose of that policy item is to make the Department aware that there exists a potential resource (such as a pending lawsuit) that may pay claimant's medical bills. Nothing in that item requires a claimant to pursue a claim; only to provide the relevant information to the Department about the potential for a claim, if the Department asks. Claimant did provide this information to the Department upon request. Nothing in this item talks about a lawsuit being a potential benefit that must be pursued, and the Department is incorrect if it is treating this manual item as if a lawsuit is required.

The Department has failed to prove that claimant failed to pursue benefits that she may have been eligible for. Even if the Department had proven this, the benefits that the Department alleges that claimant did not pursue are not benefits that claimant would have been eligible for, even if the undersigned were to take everything the Department said at face value. For these reasons, the Administrative Law Judge rules that the Department was in error when they denied claimant's FIP application for failing to pursue potential benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant did not fail to pursue potential benefits.

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

The Department is ORDERED to re-process claimant's FIP application, preserving claimant's protected filing date of July 2, 2009, and determine eligibility based upon all other eligibility factors that were present at that time. The Department is FURTHER ORDERED to determine, based upon claimant's statement that she was applying for FIP for the months of July and August only, whether claimant would be eligible for an STFS payment.



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

Date Signed: 12/04/09

Date Mailed: 12/11/09

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.

RJC/dj

cc:

