

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: 2009-6134

Issue No: 3008; 2006

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 18, 2009

Macomb 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 18, 2009.

ISSUE

Were the claimant's FAP allotment and Medicaid benefits cut off properly for failure to cooperate with an agency investigation?

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 and Medicaid benefits for herself and her children.

(2) On 6-6-08, the OIG began an investigation into claimant's file to determine if claimant's husband was no longer a member of claimant's recipient group, as claimant had claimed upon her DHS-1171, Assistance Application.

(3) Over the course of the next 2 months, OIG Agent V. Johnson attempted to visit claimant several times at her home, but was unable to make contact with claimant.

(4) Agent Johnson never received a response, even after leaving business cards after each visit.

(5) Agent Johnson left a voice message on 7-29-08, requesting that the claimant get in touch with the agency.

(6) Sometime after this, claimant alleges that she made contact with OIG Agent Norman McKenzie, who interviewed claimant.

(7) Attempts to verify this allegation have proven unsuccessful; the OIG claims that the case file is missing.

(8) On 9-4-08, claimant was sent a DHS-176, Benefit Notice, which notified claimant that her FAP and Medicaid benefits would stop because claimant had failed to cooperate in an agency investigation.

(9) On 9-6-08, claimant requested a hearing, alleging that she had cooperated with an agent who had interviewed her sometime during the late summer on her front porch, and never asked to come in the house.

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).

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. Group composition may be verified if the information given by the claimant is questionable. PEM 212. Home calls may be used to verify certain factors which are in doubt. PAM 115, PAM 130.

While it is unknown what specifically prompted the OIG to investigate claimant's group composition and living situation, it is undeniable that they had the right to do it; PAM 115 and 130 allow home visits in order to verify information which is questionable or in doubt. Furthermore, PEM 212 states that group composition should be verified if the information given by the claimant is questionable.

Claimant had stated on her assistance application that her husband was no longer living in the house; however, claimant's husband was still listed as being the mortgage holder of the house, and his car (verified by Secretary of State registration records) was seen in the driveway. Furthermore, his driver's license still listed claimant's home as his home address. While there could be legitimate explanations for these factors, claimant's given information certainly rose to the level of questionable, and a home visit was appropriate. Therefore, the Department was correct in sending an OIG agent to visit claimant in her home, and the claimant had a duty to provide further verification to the agents in order to satisfy the need for a complete eligibility determination as proscribed by PAM 115.

The Department further claims that the claimant refused to cooperate with this investigation, or provide verification of her eligibility with regards to group size; hence the cessation of her benefits. However, the undersigned does not believe the Department has met their burden of proof in regards to this claim.

Admittedly, it is most likely true that the claimant did receive several visits by Agent Johnson, though claimant was adamant that she never received a business card or notification to call. The undersigned also believes that Agent Johnson, in all likelihood, left a message on claimant's answering machine, which was never returned. Claimant alleged that no message had been ever received, and offered to submit phone records showing the truth of her allegation; however, no phone records were ever submitted, though the record had been extended for two weeks.

However the undersigned is swayed by one fact; claimant specifically named Agent Norman McKenzie as having spoke to her. Claimant remembered that Agent McKenzie had requested to enter the house, and claimant told him that it would be inadvisable to do so, as

claimant's mother had shingles; however, the Agent would still be allowed to enter. Claimant alleged that she had answered all his questions, and Agent McKenzie never requested to enter the house after the shingles warning. Claimant recalls having this conversation sometime during the late summer, before she received the benefit notice.

When the undersigned requested that the Department look into this allegation, it was reported that claimant's case file had been lost, and they were unable to rebut claimant's statements in any way. The Department was unable to provide any case notes that would shed any light on this matter, or provide any evidence to refute claimant's allegations.

Admittedly, the undersigned does not find credible claimant's claim of shingles. Claimant did not provide any medical evidence supporting her allegation, and even if she did, such medical evidence would most likely not support claimant's claim of contagion. Shingles is caused by the Varicella Zoster Virus (VZV) and is not spread by casual contact. Shingles can only be transmitted from person to person by direct contact, and only when VZV is actively present in open sores. All physicians who treat shingles inform their patients that it is not contagious. While it is possible that the claimant did not know this, more likely, the intent of the statement was more than likely to prevent the OIG agent from entering the home using fear.

However, the Administrative Law Judge finds it curious that claimant would be able to name a specific OIG Agent without ever having met him, and recall the details of the conversation. That claimant was able to do so speaks to her credibility with regard to speaking with an OIG agent, and creates a refutable presumption that the OIG was able to contact claimant after all.

The Department was unable to refute this presumption, stating that they had lost the case file. Had the Department been able to provide any information whatsoever, the undersigned

might have viewed their claims and allegations more generously; however, a statement that the case file and evidence has been lost means that all evidence must be taken in the light most beneficial to the claimant. This must therefore lead the undersigned to the conclusion that Agent McKenzie did interview the claimant, and secured her cooperation, thus meaning that the cessation of benefits for a failure to cooperate was in error.

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 and Medicaid benefits were in error.

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

The Department is ORDERED to restore claimant's FAP and Medicaid benefits retroactive to the negative action date.

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

Date Signed: April 15, 2009

Date Mailed: April 16, 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.

2009-6134/RJC

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:

