

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: 2010-22554

Issue No: 3000; 2009

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 25, 2010

Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 claimant's request for a hearing. After due notice, an in-person hearing was held on March 25, 2010. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the DHS properly process claimant's 12/18/2009 application?

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 is divorced from the mother of his son.
- (2) At all relevant times prior to the issues herein, claimant had open FAP and

MA cases.

(3) On 12/18/2009, claimant came into the local office and delivered a 12/17/2009 order regarding custody and parenting time and support regarding claimant's son. On 12/17/09, the court issued an order indicating that claimant will have physical custody of his son. Claimant requested that the department remove his son from the mother's MA and FAP cases and move them into his household.

(4) There was no evidence on the record that the department ever acted on claimant's 12/18/2009 application for the request to add claimant's son to the FAP and transfer the MA.

(5) On 1/20/2010, claimant inquired as to the status of the application. The department failed to act on the application and claimant refiled on 1/21/2010.

(6) Claimant's son always had an MA case. There were no months or days without MA coverage.

(7) Claimant insisted at the administrative hearing that his son was not added to his FAP case until March 1, 2010. The department presented evidence that the FAP benefits were transferred to claimant effective 2/1/2010. The benefits were paid 2/16/2010 for the FAP benefits that were for the period beginning 2/1/2010.

(8) On 2/10/2010, claimant requested a hearing.

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).

With regards to a dependent's benefits, the department is not allowed to allow duplicate benefits for both parents when the parents are living separately.

With regards to claimant's son's MA, the department indicated that the son was never without Medicaid coverage. Claimant asked for a hearing to request that the department account for why the MA was not transferred to him earlier. As already noted, the department cannot allow duplicate benefits. At the same time, the department is expected to act with reasonable timeliness. It does not appear in this case that the department acted timely with regards to closing the case and reopening it. To this extent, the department's actions are reversed.

However, there is no remedy to grant claimant. Claimant's son was in receipt of a full and active Medicaid case at all times. If claimant was unable to obtain the Medicaid card from his ex-spouse, the department cannot be expected to do so, on behalf of claimant. At the same time, if the department failed to act more promptly in this case, it is the fault of an individual's actions and failure to comply with the standard of promptness. If claimant has a complaint regarding the conduct of an employee, claimant should refer below as to what his recourse is. Administrative Law Judges have no authority to review the same.

With regards to claimant's request to have his son added to his FAP case, policy is found primarily in BEM Item 212. This Item indicates when there are changes with a primary caretaker that the department is required to re-evaluate the arrangement and to calculate the number of days the child sleeps between the two homes. The household in which the child spends more than half the days in a month on average is the household entitled for the benefits.

In this case, claimant seemed very confused about the dates. Claimant was correct and clear that there was an application made on 12/18/09, which the department failed to timely act on. However, claimant insisted that FAP benefits were not added until 3/1/2010. The department submitted substantial and credible evidence that, in fact, benefits were paid on 2/16/2010 to claimant's card for an effective date of 2/1/2010, forward. The department did indicate that it should have acted on a member add within ten days of the request. The department failed to timely act in this case. However, claimant has no remedy. This Administrative Law Judge has no authority to grant any Food Stamp benefits where they have already been paid, even where the department did not act correctly due to the failure of a worker to comply with the standard of promptness. The standard of promptness is generally viewed as a right without a remedy. The child received all the benefits he was entitled to receive.

With regards to claimant's complaint regarding the conduct of the State employee, Rule 400.903 states as follows:

Right to a Hearing: ... (5) a complaint as to alleged misconduct or mistreatment by a State employee shall not be considered through the administrative process, but shall be referred to the department personnel director. R 400.903. Right to a Hearing.

Claimant may file a complaint at the local office or at the central office for the DHS in Lansing. Once again, this Administrative Law Judge cannot review the conduct of a State employee.

As the case stands, this Administrative Law Judge rules that the department did not act timely. However, there is no remedy. Claimant was confused as to the actual time at which the department acted. As the facts as a whole indicate that the child received all the benefits to which he was entitled, there is no remedy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department failed to act timely on claimant's 12/18/2009 application. There was no lapse in FAP or Medicaid benefits paid by the DHS on behalf of this child. There is no remedy where the remedy would create duplicate benefits. The failure of the department to comply with its standard of promptness will not entail claimant to receive more benefits on behalf of his son than his son was entitled to receive. While the department failed to timely process the application, there is no remedy to grant. Thus, while the department's actions were incorrect, there is no remedy to grant claimant.

Janice /s/
Adm

Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 1, 2010

Date Mailed: June 1, 2010

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 mailing date of the rehearing decision.

JS/cv

cc:

