

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.: 2010-11772
Issue No.: 6012
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
March 15, 2010
Oakland County DHS (3)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on March 15, 2010. Claimant's attorney, [REDACTED], appeared on Claimant's behalf. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

Whether DHS properly denied Claimant's 7/29/09 application for Food Assistance Program (FAP) benefits, Medical Assistance (MA) and Home Help Care (HHC)?

FINDINGS OF FACT

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

1. An Assistance Application (DHS-1171) on behalf of Claimant was received by DHS on 7/31/09.
2. Claimant's DHS-1171 requested FAP and MA benefits.

3. On 8/5/09, DHS mailed an Incomplete Application Notice (DHS-723) to the address listed on Claimant's application.
4. DHS was not able to identify why the DHS-723 was mailed as the document and the file were not available at the hearing.
5. DHS subsequently denied Claimant's request for MA and FAP due to failure by Claimant's representative to respond to the DHS-723.
6. Claimant's representative submitted a Hearing Request on 9/21/09 regarding denial of Claimant's application for FAP, MA and HHC.

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).

DHS was unable to obtain Claimant's file for the hearing. The credibility of the testimony of DHS is considered in light of this disadvantage. It is also worth noting that the undersigned erred by not administering an oath to Claimant's attorney to allow for testimony regarding the submission of documents on behalf of Claimant. The undersigned failed to recognize that the attorney's appearance was more relevant as a witness, not as an advocate.

DHS testified that Claimant submitted a filing form (a request for a DHS-1171) sometime in 7/2009. DHS seemed to assume this because a DHS-723 was subsequently mailed to Claimant. The DHS-723 is appropriate to mail in one of two circumstances, submission of an Assistance Application lacking a signature by an authorized representative or an Assistance Application submitted to DHS without supporting documentation of Claimant's signature authorizing representation. The testimony that Claimant submitted a filing form is found to be inaccurate. Claimant's attorney presented a Federal Express receipt verifying a delivery date of 7/30/09 and a DHS-1171 dated 7/29/09. These documents tend to show that an Assistance Application, not a filing form, was prepared on 7/29/09 and that DHS received the DHS-1171 on 7/30/09.

To make matters more confusing, a document submitted by Claimant's attorney after the hearing indicated that another application was submitted prior to 7/31/09 by someone acting as Claimant's guardian and conservator. This decision will not address that application further as no testimony was taken regarding the application and the document submitted by Claimant's attorney was not presented as part of Claimant's case during the hearing. It is likely that the multiple applications and multiple persons sending them greatly added to the confusion of DHS being able to process Claimant's case properly.

Claimant's attorney disputed receiving a DHS-723 and also stated that DHS consistently failed to mail correspondence to the address requested by Claimant's application. A DHS-1171 with a signature dated 7/29/09 was submitted as Exhibit 4. Only one page was missing from this application, the page concerning Claimant's residential and mailing address. The failure to submit only this page tends to show that DHS was using the correct mailing address, as reported by Claimant's attorney. Claimant's attorney also claimed that the Hearing Summary was not received but it was found within the hundreds of unrequested documents submitted by Claimant's attorney. It is found that DHS correctly mailed their requests to the address reported by Claimant's representatives.

The undersigned speculates that the DHS-723 was mailed because Claimant's attorney submitted an Assistance Application that was signed by the attorney, not by Claimant. In such a case, DHS would have appropriately requested documentation that verified the attorney as an authorized representative; the DHS-723 would have been an appropriate form to use to make such a request. DHS may have been correct in mailing a DHS-723 and closing the case if no timely response was made.

However, because DHS was unable to furnish the DHS-723 or provide testimony supporting the request, it must be found that the denial of the 7/29/09 was incorrect as there was not a supporting basis for the denial.

DECISION AND ORDER

The actions taken by DHS are REVERSED. The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly denied Claimant's 7/31/09 Assistance Application for MA and FAP. It is ordered that DHS shall begin the process

to determine Claimant's eligibility for FAP and MA from the application date of 7/31/09. It was noted during the hearing that Claimant's FAP and MA eligibility may be impacted by a trust.



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

Date Signed: 3/30/2010

Date Mailed: 3/30/2010

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 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.

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