

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: 201016604
Issue No: 3008; 3002
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 4, 2010
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 March 4, 2010.

ISSUES

Was the claimant's FAP case properly placed into negative action?

Was the claimant's FAP allotment calculated correctly?

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 a FAP recipient in Wayne.
- (2) Claimant's benefits were placed into negative action in June 2009.
- (3) In December 2009, Administrative Law Judge Robert J. Chavez issued a decision reversing the action of June 2009.

- (4) Claimant's FAP case was placed into negative action in August 2009 for failing to return a semi-annual contact form.
- (5) The Department was unable to provide the Administrative Law Judge with a copy of the notice of negative action.
- (6) Claimant was never sent a negative action notice for this action.
- (7) Claimant only found out about the negative action when the Department refused to issue retroactive benefits from the previous case after the month of August 2009.
- (8) On January 12, 2010, claimant requested a hearing.
- (9) Claimant's FAP was subsequently terminated in February 2010 for excess income reasons.
- (10) The Department agreed, at the hearing, to recalculate claimant's FAP budget using income verifications supplied by the claimant.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Timely notice must be given for a negative action unless policy specifies adequate notice or no notice. BAM 220. For FAP, timely notice is required for all negative actions unless the

situation is specifically listed under the adequate notice or no notice sections of BAM 220.

In the current case, none of those exceptions apply.

The only exception to the notice requirements in this case that could arguably apply is a statement in BAM 220 that no notice is required when an FAP certification period ends. However, there was no testimony or evidence presented at hearing that this was the end of a certification period.

The Department testified that there was no negative action notice in the claimant's file, but this notice would have been issued from [REDACTED] in Lansing. However, the undersigned believes that it is the Department's duty to provide evidence proving each element of their case. Claimant testified credibly that he never received a negative action notice. Furthermore, given that claimant's case was supposed to be in negative action from the June 2009 case, the Administrative Law Judge is skeptical as to whether claimant's case could have been placed into negative action a second time.

This same logic holds for the semi-annual contact form that claimant was allegedly sent; the undersigned is skeptical as to why claimant would have been sent a semi-annual contact form if the claimant's case was in negative action at the time. Claimant also, credibly testified that he never received a negative action notice.

Therefore, the undersigned will assume that this evidence does not exist.

Due to the lack of requested evidence, the undersigned will therefore hold that claimant was never notified he needed to return a semi-annual contact form, and that claimant was never sent a negative action notice, in contravention of BAM 220. Therefore, the Department's actions are reversed in full. The undersigned must hold that the Department was incorrect when it closed claimant's FAP benefits.

With regard to the negative action of February 2010, it is noted that the Department agreed that claimant's FAP budget was incorrect. The Department agreed to recalculate claimant's FAP allotment from February 2010 onward, using income verifications provided from the claimant.

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 place claimant's FAP case into negative action in August 2009 was incorrect.

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

The Department is ORDERED re-calculate claimant's FAP eligibility for the months of September, October, November, and December 2009, issuing supplemental benefits to the claimant for those months as necessary. The Department is FURTHER ORDERED to recalculate claimant's FAP benefits from February 2010 onward, using income verifications provided by the claimant.

The Claimant is ORDERED to provide the Department with income verifications for the month of February 2009, onward, in a time limit consistent with the policy found in Bridges Administrative Manual Item 130.



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

Date Signed: 05/06/10

Date Mailed: 05/13/10

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.

RJC/dj

cc:

