

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: 20101765
Issue No: 3005
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 16, 2009
Oakland 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 November 16, 2009.

ISSUE

Was the claimant's FAP benefits put into negative action at the appropriate time?

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 due for an FAP redetermination in August, 2009.
- (2) Claimant's FAP certification ended on August 31, 2009.
- (3) Claimant's FAP recertification was not completed in a timely manner.
- (4) Claimant's redetermination was completed on September 15, 2009.

- (5) The Department had intended to supplement claimant for any missed benefits resulting from the delay of recertification.
- (6) When claimant's FAP redetermination was completed, it was revealed that claimant's son had moved out of the household and applied for his own benefits on September 10, 2009.
- (7) The subtraction of claimant's son from her household rendered claimant over income for FAP benefits for her new household size.
- (8) Claimant was not awarded benefits for the month of September, 2009.
- (9) Claimant requested a hearing on September 25, 2009, arguing that, but for the Department's failure to make a redetermination in a timely manner, claimant would have received FAP benefits in September, and was therefore entitled to such benefits. Claimant further argued that because her son moved out on September 10, after the normal benefit issuance, claimant did not lose her FAP eligibility until the month of October.

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).

A member add that increases benefits is effective the month after it is reported or, if the new member left another group, the month after the member delete. In determining the potential

FAP benefit increase, the Department must assume the FIP/SDA supplement and new grant amount have been authorized. When a member leaves a group to apply on his own or to join another group, the Department must do a member-delete in the month they learned of the application/member add. If the member-delete decreases benefits, adequate notice must be given for the negative action. BEM 550, 212.

Furthermore, and most importantly, BEM 212 states that recoupment should be initiated, if necessary, for a member delete. A person must not participate as a member of more than one FAP group in any given month. BEM 212, 222.

In the current case, claimant argues that because the Department was untimely in the processing of her redetermination, she was incorrectly denied benefits for the month of September, 2009. Claimant argues that her son did not move out until [REDACTED], after her September benefits would have been issued. Had her benefits been issued in a timely fashion, claimant would have been in possession of her monthly FAP benefits when her son moved out.

Claimant did not argue that her benefits were incorrectly terminated; only that October, 2009, should have been the first month that she was without benefits.

After a careful review of all policies, the Administrative Law Judge must disagree.

BEM 550 and BEM 212 state that a member delete in which a household group member applies for benefits on their own, as happened in the current case, must be processed in the month that the Department learned of the new application. In the current case, that month would be September. While the undersigned acknowledges the argument that the Department must only process the change, and that the policy is silent as to when the change takes effect, the

policies contain two provisions that ultimately give great weight to the argument that the policies intended for the change to be effective for the benefit month that they occurred in.

First, BEM 212 specifically states that recoupment should be initiated, if necessary. This clause heavily implies that a member delete will result in a heavy chance of recoupment—that is, a chance that a claimant will have been overpaid benefits. If a member delete would not affect claimant’s benefits until the following benefit month, a recoupment would never be necessary for a member delete resulting from a new application.

Second, BEM 212 also states that no person can be a member of more than one FAP group in a given month. FAP policy at BAM 220 states that an approved FAP application is effective from the date of that application; therefore, if claimant’s benefits would not be changed until the following month, October, claimant’s son would be receiving two sets of FAP benefits—one upon his mother’s case, and another upon his own. BEM 212 specifically prohibits this scenario, and therefore, a member delete such as contemplated in the current case must be effective in the current month, i.e. September, 2009.

While claimant is correct in stating that she would have received FAP benefits but-for the Department’s error in processing her redetermination during the month of September, these benefits, according to policy, would ultimately have been recouped, and claimant would have ended up owing money to the agency.

Therefore, the actions of the Department were correct.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the claimant was not eligible for an FAP benefit in the month of September, 2009.

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



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

Date Signed: 01/11/10

Date Mailed: 01/13/10

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:

