

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: 20102804
Issue No: 3008
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 18, 2009
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 November 18, 2009.

ISSUE

Was the claimant's FAP properly placed into closure for a failure to return verifications?

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 an FAP recipient in Wayne County.
- (2) On September 2, 2009, claimant reported a change in employment at her semi-annual contact and provided a verification of employment form, DHS-38.
- (3) The Department ruled that this verification was incomplete.
- (4) Claimant was sent another verification form and a warning that her FAP case would be closed if she failed to return the form.

- (5) Claimant attempted to contact the Department several times to find out what was wrong with the initial turned in form, but got no reply, or any answers to her questions.
- (6) Claimant's FAP case was placed into closure on September 30, 2009, ostensibly because claimant failed to provide check stubs.
- (7) Claimant's DHS-38 contains her rate of pay, her estimated work schedule, a listing of her last paychecks and the number of hours expected to work per week.
- (8) Claimant's employer, in the listing of recent paychecks, listed the date received, and hours worked, but did not put down gross pay.
- (9) DHS deemed that this meant the form was incomplete, even though claimant's gross pay could easily be figured out from the information provided.
- (10) This math was also consistent with claimant's employer's statement of claimant's average paycheck amount.
- (11) The Department also deemed the DHS-38 incomplete because claimant's employer failed to date the form when they signed it.
- (12) On October 8, 2009, claimant requested a hearing, alleging that she had provided the Department with all required documents, and that the Department would not tell her what the Department wanted in order to keep her FAP case open.

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).

An application or redetermination is considered incomplete until it contains enough information to determine eligibility. BAM 115. Eligibility is determined through a claimant's verbal and written statements; however, verification is required to establish the accuracy of a claimant's verbal and written statements. Verification must be obtained when required by policy, or when information regarding an eligibility factor is incomplete, inconsistent, or contradictory. An application that remains incomplete may be denied. BAM 130. All sources of income must be verified. BEM 500. A DHS-38 is considered an acceptable verification of income. BEM 500. Other verifications of income are acceptable, including pay stubs, copies of work schedules when the rate of pay is known, and written statements from an employer (provided that statement contains the necessary information required to determine FAP eligibility). BEM 500.

The Administrative Law Judge notes that in BEM 500, the theme that permeates the list of acceptable verifications of income is that the claimant has provided enough information to determine eligibility. For instance, a work schedule is deemed acceptable, as long as the rate of pay is known. Furthermore, BAM 130 states that verification must be obtained when an eligibility factor is incomplete, inconsistent, or contradictory; furthermore, an application cannot be processed until the Department contains enough factors to determine eligibility. What neither of these regulations state is that the claimant has to provide information in a form that conveniences the Department. These regulations also do not give a proper style for providing verifications.

In the current case, the Department did not claim that it lacked the information required to determine eligibility. Instead, it relied on arguments alleging, for instance, that the DHS-38 was unacceptable because it had not been dated by the employer. The Department failed to state how a date next to a signature in anyway reflected on claimant's eligibility factors, especially given that the most recent pay check was listed as August 21, 2009, only a few days before the redetermination.

The Department also argued that because the employer failed to fill out a section on gross income, the form was incomplete. The Administrative Law Judge finds this argument to be without merit. At no point do the appropriate regulations state that a DHS-38 be filled out to a caseworker's specification and convenience. BEM 500 states only that a DHS-38 is an acceptable form of verification. Given that other acceptable forms of verification include a work schedule, with no gross pay amounts listed, the Administrative Law Judge can only conclude that regulations contemplate instances where the exact gross amount paid per month is not always explicitly stated. In fact, the linking factor between all the acceptable verifications in BEM 500 is a claimant's rate of pay, and the number of hours worked in a given pay period and month.

This is exactly what claimant has provided. A quick glance at the provided verification shows that her rate of pay is \$7.40 an hour. Claimant works between 25 and 30 hours per week. During the pay periods in question, claimant worked 30 hours per week, and was paid bi-weekly. \$7.40 an hour, times 30 hours is \$222 dollars per week, or exactly what the claimant stated her income was on her semi-annual contact form. In sum, the Department had all the information it needed to determine eligibility, and closing the claimant's FAP case in light of this information was entirely incorrect.

The undersigned will also note that even if the DHS-38 was incorrect or incomplete, the case would still require a reversal. The claimant received a notification mid-September that stated her case would be terminated if she failed to provide verifications. As far as claimant was aware, she had provided all necessary verifications. This notice was silent as to what claimant needed to provide. When claimant attempted to contact the Department, she was unable to make contact with anybody who could tell her what she needed to do. Claimant's caseworker did not return her phone calls, and in-person visits to the Department were unsuccessful. Claimant conducted herself with all due diligence of a person facing case closure—it was the Department that failed to help her correct any problem, even though that problem was an imaginary one. The undersigned is not in the habit of deciding that a claimant failed to return verifications when the Department would not notify the claimant of what verifications were needed. Therefore, even if claimant's DHS-38 was incomplete, the Department would still be incorrect, and their actions would require a reversal.


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 closure was incorrect.

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

The Department is ORDERED to reinstate claimant's FAP case retroactively to the date of negative action, using the information already in its possession to determine eligibility. The Department is FURTHER ORDERED to supplement any FAP benefits claimant was eligible for,

but did not receive due to the negative action, in accordance with policy found in the Bridges Eligibility Manual.



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

Date Signed: 01/04/10

Date Mailed: 01/08/10

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:

