

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201034510
Issue No: 1022;1030
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date: January 5, 2011
Wayne 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 upon claimant's February 1, 2010 request for a hearing. After due notice, the department failed to appear for four scheduled telephone hearings. Claimant appeared for all hearings. On 1/4/11—the fifth attempted time to hold this hearing—the department appeared and a 3-way telephone conference hearing was held one year after claimant's hearing request.

ISSUES

1. Did the DHS properly close claimant's FIP/MA grant on the grounds that there was no longer an eligible grantee in her household?
2. Was claimant overissued FIP/MA benefits for which the DHS is entitled to collect/recoup?

PROCEDURAL HISTORY/FACTS

1. On February 9, 2010, claimant filed a hearing request at her local office which states: "because I do not understand what is going on, yes I need to see you, so we can talk and I can understand what it is. I got two letters saying something I don't know. Please let me know when I can see you."
2. On 3/1/10, SOAHR received claimant's hearing request.
3. On 9/15/10, SOAHR issued a Notice of Hearing for 10/5/10. Pursuant to claimant's request, SOAHR scheduled a 3-way telephone conference hearing.

4. On 10/5/10, the assigned ALJ —Judge [REDACTED]—was unable to get any response from the local office. Judge [REDACTED] adjourned and rescheduled due to the department's failure to appear.
5. On 10/7/10, SOARH issued a new Notice of Hearing rescheduling claimant's hearing for 10/26/10 assigning the case to Judge [REDACTED]. The county failed to appear. Judge [REDACTED] wrote a note in the hearing file: "please get to the bottom of this. We need to make sure this lady gets her hearing!" The note is undated.
6. On 11/1/10, SOARH rescheduled claimant for a 3-way conference hearing. The notice specifically states: "3-WAY WITH CLIENT." An 11/23/10 memorandum to file entry by SOAHR states: "no one from local office called. I tried to reach them at coordinator's number and main number. Both numbers disconnected. Client called twice. I explained the situation to her and instructed her to call [REDACTED] (SOAHR employee) and her local office tomorrow." Signed by "DC." This hearing was also assigned to Judge [REDACTED].
7. On 12/15/10, SOAHR once again scheduled a fourth hearing for 1/4/11, again stating on the notice: "3-WAY WITH CLIENT." At the time and place of the 1/4/11 scheduled hearing, no one from the local office indicated that they were ready to proceed. The undersigned Administrative Law Judge—Judge Spodarek—made a determination that based upon claimant's hearing request it was not possible to proceed without the DHS. Due to the department's file failing to contain a legally evidentiary packet. Supervisory ALJs [REDACTED] and [REDACTED] became involved and made numerous phone contacts with the local office to attempt to hold this hearing, including; [REDACTED]. [REDACTED] Contacts with the main office and the coordinator were called without success. Mr. [REDACTED] (of SOAHR) e-mailed DHS field operations— Mr. [REDACTED] Mr. [REDACTED] was unsuccessful in reaching anyone at the local office.
8. On 1/4/11, the undersigned Administrative Law Judge informed the claimant that due to an opening in her docket on the following day, the hearing would go forward on 1/5/11 with or without the department.
9. On 1/5/11, one of the supervisory ALJs met with the head of Legal Affairs within the Department of Human Services.
10. On 1/5/11, a local office worker and supervisor appeared for the administrative hearing. The department representatives gave no explanation as to the failure of the department to appear for four previously scheduled hearings. The department representatives indicated that they received a Notice of Hearing on 1/5/11 and that was the reason

for appearing at the administrative hearing. The DHS had no evidence of a Notice of Hearing for 1/5/11. The department's witnesses were not credible.

11. At the 1/5/11 administrative hearing, claimant stipulated to the first issue regarding the closure of the FIP case. Claimant requested a review of the DHS requesting that she pay back benefits to the department. The department indicated that it was not prepared to go forward on this issue, did not feel that it was required to go forward on this issue, and requested an adjournment. The adjournment was denied.

SUBSTANTIVE ISSUES/FACTS

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

1. At all relative times prior to the negative action herein, claimant was a grandparent and an ineligible grantee for her granddaughter and great grandchild for the FIP and MA program.
2. Claimant stipulated at the administrative hearing that her granddaughter moved out when she turned 18 with the great grandchild. Claimant encouraged her granddaughter to apply for FIP and MA on behalf of herself and her great grandchild.
3. Claimant stipulated that her granddaughter and great granddaughter moved out which triggered the negative action. The ALJ granted the department a recess to make a Bridges inquiry. The department subsequently testified that the department issued closure notices for 2/1/10 for FIP and 3/1/10 for MA.
4. Claimant was unable to prepare for the hearing as the department failed to prepare a sufficient legal packet.
5. The department indicated it had no knowledge or information regarding the overissuance and did not feel it needed to go forward on the issue as claimant did not specifically mention it in the hearing request despite claimant's reference to two letters. The department presented no law, statute, policy, which would entitle the department to dictate to the Administrative Law Judge what issue(s) are to be reviewed at the administrative hearing.
6. The department requested an adjournment. The ALJ denied the department's request on the grounds that this was the fifth rescheduled hearing and claimant's request was one year old. The department had one year to prepare for this hearing.

7. The department was given additional time at the administrative hearing to make a Bridges inquiry. The department returned and indicated that Bridges indicated that a notice of overissuance for FIP was given to claimant for agency error from 9/1/09 to 1/20/10. The department had no evidence, information, or verification to support an overissuance.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. 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).

This Administrative Law Judge wishes to note that claimant's hearing request was almost a year old, and that claimant attempted to appear on five different occasions for an administrative hearing. As noted in the findings of fact, the department failed to appear on four separate occasions. The fifth date was scheduled at claimant's inconvenience—while she was at work. The undersigned Administrative Law Judge intended to go forward with the administrative hearing with or without the department. When the department finally appeared on 1/5/11, the department indicated it was appearing because it received notice. The department had no evidence to support its claim. SOAHR never issued a Notice of Hearing for 1/5/11. The department made an alternative argument that it misread the 1/4/11 notice. The department's testimony was not credible.

The department's refusal to go forward violates claimant's rights and pursuant to law, statute, rules, and regulations found at MAPA, and BAM Item 600. More specifically, see MCL 400.9; 400.37; MCL 24.271—24.287; R 400.901—400.922 MAC; MCLA 400.9; 42 CFR 431.200—250; 42 USC 13.96r—5. Claimant's due process rights were significantly compromised.

ISSUE 1

The department seemed to prepare this evidentiary packet on the basis of the ineligible grantee issue. However, there were no relevant exhibits in the evidentiary packet. Nor was there an explanation on the Hearing Summary which would allow any reader to understand or be on notice as to the action(s) taken by the department. As noted in the findings of facts, claimant does not dispute the fact that her granddaughter moved out in January, triggering closure of FIP effective 2/1/10, and MA effective 3/1/10. In fact, claimant encouraged her granddaughter to apply for assistance. There is no dispute in this case with regards to Issue 1, and thus the department is partially affirmed on this issue.

ISSUE 2

Under federal law, federal regulations, state policy and procedure, administrative rules, and the Michigan Administrative Procedures Act, the department has the burden of proof to go forward at the administrative hearing to substantiate with sufficient evidence the action it took and the reason(s) for the action(s).

In this case, the department initially indicated it had no knowledge or information with regards to any overissuance. Allowing the department a recess to make a Bridge's inquiry, the department returned indicating that in fact an overissuance/recoupment letter was issued on 1/29/10 for FIP due to agency error. The department indicated it had no knowledge, no information, no verification, and no evidence regarding the overissuance. The department requested an adjournment in order to prepare for an overissuance issue which would require a sixth scheduled hearing. The department's request was denied.

Under BAM, Item 600, as well as general evidentiary rules found in the administrative hearings handbook and at law, the department cannot prevail where it does not meet its burden of proof. The department may choose to send unprepared individuals to an administrative hearing on behalf of the department, and/or, may choose to overburden the workers with such enormous caseloads where they cannot possibly present an adequate case. However, in such instances, the department cannot prevail where it does not present sufficient evidence to support its actions. Nor can the department simply expect to request an adjournment where they are not prepared in order to get a second chance to meet their burden of proof. Claimant was entitled to have an adequate evidentiary packet disclosed to her prior to the hearing and in order to give her an opportunity to prepare. The department failed to do so. Claimant was entitled to have an evidentiary hearing on this issue since the first scheduled hearing. Five scheduled hearings are extraordinary.

After careful review of the substantial and credible evidence on the whole record this ALJ finds that the department failed to meet its burden of proof, and thus, on this issue the department is reversed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides:

Issue 1: Claimant stipulated to the facts that her granddaughter and great granddaughter moved out of the house and that she did not have eligibility and that the department correctly closed her case as ineligible grantee for FIP/MA. On this issue, the department is AFFIRMED.

Issue 2: The department failed to present any evidence of an overissuance/recoupment for FIP/MA benefits for an alleged time period from 9/1/09 to 1/31/10. The department is ordered to remove any overissuance/recoupment action in its BRIDGES system against claimant for the time period from 9/1/09 to 1/31/10. On this issue the department is REVERSED.

Janice

/s/

Spodarek
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: February 11, 2011

Date Mailed: February 11, 2011

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 receipt date of the rehearing decision.

JS/vc

cc:



