

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

IN THE MATTER OF:



Reg. No.: 201038064
Issue No.: 3022
Case No.:
Load No.:
Hearing Date: July 29, 2010
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne VanderHeide

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 on July 29, 2010 from Detroit, Michigan. The Claimant appeared and testified. , FIS appeared on behalf of the Department.

ISSUE

1. Whether the Department properly closed the Claimant's Food Assistance Program ("FAP") benefits effective 12/1/10?
2. Whether the Department properly closed the Claimant's minor child's MA benefits effective 6/1/10?

FINDINGS OF FACT

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

1. The Claimant was an active FAP & MA recipient who was up for a semi-annual review.
2. On 10/2/09, the Department sent Claimant a semi-annual contact report. (Exhibit 2, p. 2).
3. The Department testified that there were issues regarding Claimant's employment that needed verification.

4. On November 10, 2009, the Department sent Claimant a Notice of Potential Food Assistance Closure indicating that Claimant had not returned all required information for the semi annual review. (Exhibit 2, p. 11).
5. Claimant testified that she never received the notice of potential FAP closure.
6. On 11/18/10, the Department sent Claimant a Verification checklist requesting “paystubs from all jobs, labeled clearly with the employer’s name, gross income and receipt date from 9/1/09 – present. A form completed by [REDACTED], if possible.” (Exhibit 2, p. 12).
7. Claimant testified that she submitted the requested information several times and discussed her various jobs with the Department. (Exhibit 2, p. 5).
8. The Department indicated that the employer needed to make a clarification about the jobs.
9. On 12/1/09, Claimant’s FAP benefits closed without further notice to Claimant.
10. On 4/14/10, the Department mailed Claimant a redetermination packet along with a notice of telephone interview scheduled for 5/3/10. (Exhibit 2, p. 16).
11. Claimant did not submit the redetermination packet.
12. On 4/19/10, the Department sent Claimant a Notice of Case Action indicating that Claimant’s person MA benefits were denied effective 6/1/09 and Claimant’s FAP benefits were closed on 12/1/09.
13. On 5/17/10, the Department sent Claimant a Notice of Case Action indicating that the MA benefits for her son would close effective 6/1/10. (Exhibit 2, p. 25).
14. The History Correspondence does not reveal that the Department sent Claimant any other earlier notices of FAP or MA closure or denial. (Exhibit 1).
15. The Department received Claimant’s hearing request protesting the closure of MA and FAP benefits on May 26, 2010.

CONCLUSIONS OF LAW

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 (formerly known as the Family Independence Agency)

administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. The Food Assistance Program, 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"), formally known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et. seq.* and MAC R 400.3001-3015. Departmental policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Reference Tables ("RFT").

A. Timeliness of Claimant's Hearing Request

The first issue to address in this case is whether Claimant's hearing request filed on 5/26/10 was timely to address the issue of her FAP benefits closing effective 12/1/09. The Authorized Hearing Representative (AHR) or, if none, the client has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days. BAM 600, p. 4.

There are two types of written notice: adequate and timely. A notice of case action must specify the following:

- The action(s) being taken by the department.
- The reason(s) for the action.
- The specific manual item which cites the legal base for an action or the regulation or law itself.
- An explanation of the right to request a hearing.
- The conditions under which benefits are continued if a hearing is requested.

BAM 220, pp. 2.

Adequate notice is a written notice sent to the client at the same time an action takes effect (i.e., not pending). Adequate notice is given in the following circumstances:

- Approval/denial of an application.
- Increase in benefits.

Id.

For FAP, only adequate notice is required for changes reported on a DHS 1046, Semi-Annual Contact Report. For the FAP program only, *no* notice is required when the FAP certification period has expired. Timely notice should be given for a negative action unless policy specifies adequate notice or no notice. A timely notice is mailed at least 11 days before the intended negative action takes effect. The action is pending to provide the client a chance to react to the proposed action. BAM 220, p. 4.

In the present case, Claimant's FAP benefits were certified through the end of April, 2010. Accordingly, Claimant should have been given timely notice of her FAP benefits closing before the certification expired. Claimant did not receive notice from the

Department until April 19, 2010, five months after her benefits terminated. Clearly, this notice was not timely, although it should have been. Claimant filed her hearing request within 90 days of receiving the notice of the FAP closure. Accordingly, Claimant's hearing request was timely filed in relation to her getting notice and the remainder of the substantive issues will be addressed.

B. FAP

Semi Annual reviews are required every six months for a twelve month certification period. If the DHS-1046 is not logged in by the tenth day of the sixth month, Bridges will generate a DHS-1046A, Potential Food Assistance (FAP) Closure, to the client. This reminder notice explains that the client must return the DHS-1046 and all required verifications by the last day of the month or the case will close. BAM 210.

Clients must cooperate with the local office in determining initial and ongoing eligibility to provide verification. BAM 130, p. 1. The questionable information might be from the client or a third party. Id. The Department can use documents, collateral contacts or home calls to verify information. Id. The client should be allowed 10 calendar days to provide the verification. If the client cannot provide the verification despite a reasonable effort, the time limit to provide should be extended at least once. BAM 130, p.4; BEM 702. If the client refuses to provide the information or has not made a reasonable effort within the specified time period, then policy directs that a negative action be issued. BAM 130, p. 4. Before making an eligibility determination, however, the department must give the client a reasonable opportunity to resolve any discrepancy between his statements and information from another source. BAM 130, p. 6.

In the subject case, the Department sent out a DHS 1046, semi-annual review and Claimant responded. In fact, Claimant submitted wage stubs for pay dates of 9/11/09, 9/25/09, 10/9/09 and 10/16/09 and the second job pay stubs from 10/9/09 and 10/16/09. The Department indicated that Claimant previously had three jobs rather than two and indicated that the information submitted was not sufficient to pay benefits. Claimant testified that she tried to submit information and have conversations with the Department regarding her pay without success. It is unclear if the Department ever gave Claimant a specific wage verification to submit to the employer or tried to clear up the discrepancy in any way. Clearly, the Department could have awarded benefits based on the previous pay stubs submitted or called the employer to clarify if there was a discrepancy. Instead the Department terminated Claimant's benefits without providing her with timely notice. Furthermore, Claimant testified that she never had three jobs. If that is so, it would be difficult for Claimant to prove it in the negative.

The Administrative Law Judge finds on the evidence submitted that the Claimant did not refuse to provide the requested information, and made a reasonable effort to comply with the Department's request. Accordingly, the undersigned finds that the Department

improperly terminated FAP benefits effective 12/1/09. Based upon the foregoing facts and relevant law, it is found that the Department's 12/1/09 FAP closure is REVERSED.

C. MA

Benefits will stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. If the client does not complete the redetermination process, the benefit period is allowed to expire. The redetermination process begins when the client files a DHS-1171, Assistance Application, DHS-1010, Redetermination, DHS-1171, Filing Form, or DHS-2063B, Food Assistance Benefits Redetermination Filing Record. BAM 210, p. 2. The Department is required to conduct an in-person interview at redetermination before determining ongoing eligibility. BAM 210, p. 4.

Bridges generates a redetermination packet to the client three days prior to the negative action cut-off date in the month before the redetermination is due. This allows time to process the redetermination before the end of the redetermination month. The FAP redetermination must be completed by the end of the current benefit period so that the client can receive uninterrupted benefits by the normal issuance date. BAM 210, p. 12. In order to receive uninterrupted benefits, (benefits available on their scheduled issuance date) the client must file either a DHS-1010, Redetermination, DHS-1171, Assistance Application, or a DHS-2063B, Continuing Food Assistance Benefits, by the 15th of the redetermination month. BAM 210, p. 9.

A redetermination packet was mailed to Claimant on 4/14/10 regarding FAP and MA. On 4/19/10, the Department sent Claimant untimely notice that her MA and FAP had closed. Claimant was scheduled for a phone interview on 5/3/10 and would have had until the end of May to contact the Department before benefits were terminated. Yet she was notified before her interview date that the MA was closed. Claimant filed a hearing request before the end of May regarding both the MA and the FAP. However, Claimant's minor son was then still receiving MA benefits. When the redetermination packet was not received, the scheduled interview did not occur and the minor's MA benefits were closed effective 6/1/10.

In this case, Claimant testified that she did not fill in the redetermination packet and mail it back in. Generally, this Administrative Law Judge holds that there must be some evidence that the Claimant tried to comply with the redetermination process. Given the Department's untimely notice regarding FAP and MA in the middle of the redetermination process, both addressing MA, however, it is understandable that Claimant would have been confused about the process and which benefits needed current action. Accordingly, the Administrative Law Judge finds that there was good cause for the Claimant not completing the redetermination process for FAP or MA and the Department improperly terminated the minor child's MA benefits effective 6/1/10.

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Based upon the foregoing facts and relevant law, it is found that the Department's 6/1/10 MA closure is REVERSED.

The Department will reopen Claimant's FAP and the minor child's MA cases from the dates of closure and supplement the Claimant with benefits from the dates of Closure forward. The Claimant will then be required to undergo redetermination on both the open MA and FAP cases and comply with current verification requests. The Department shall help Claimant obtain information from the employer should Claimant request help.

DECISION AND ORDER

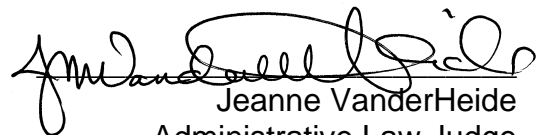
The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department did not give Claimant timely notice of the termination of FAP benefits effective 12/1/09.

Furthermore, the Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department improperly terminated Claimant's minor child's MA benefits effective 6/1/10.

Accordingly, it is ORDERED:

1. The 12/1/09 and 6/1/10 FAP and MA closures are REVERSED.
2. The Department shall reopen Claimant's FAP and MA cases from the date of closure, delete any negative action associated with the closures and supplement Claimant with any benefits to which she would have been entitled.

/s/



Jeanne VanderHeide
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: August 5, 2010

Date Mailed: August 5, 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

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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 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.

JV/hw

cc:

