

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. 201042271
Issue No. 3002
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: September 2, 2010
Office: Macomb County DHS (12)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 held on September 2, 2010. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], appeared and testified.

ISSUES

1. Whether Claimant is entitled to a FAP benefit increase in 2/2010 due to a change in rent which was reported to DHS in 2/2010.
2. Whether DHS properly withheld a supplement of Food Assistance Program (FAP) benefits to Claimant due to a pending investigation for an alleged failure to report employment by Claimant.

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 ongoing FAP recipient.
2. Claimant had an increased rent obligation beginning 2/3/10 when she moved into a new residence.
3. Claimant verified the new \$425/month rental obligation to DHS on 2/3/10.
4. DHS began to budget Claimant's rent effective FAP benefit month 7/2010.

5. DHS and Claimant agree that the failure by DHS to timely budget Claimant's rent obligation entitles Claimant to a FAP supplement of \$116 for each month from 3/2010 though 6/2010.
6. DHS issued a \$116 FAP benefit supplement to Claimant for 6/2010 only.
7. In 7/2010, based on a tip from a fraud referral hotline, it was reported to DHS that Claimant began employment and failed to report the employment to DHS.
8. As of the date of the administrative hearing, DHS is still investigating the allegation regarding Claimant's alleged failure to report employment and has not made any determination as to how Claimant's benefits will be affected.
9. On 6/25/10, Claimant requested a hearing disputing the failure by DHS to issue a \$116/month supplement in FAP benefits for each month from 3/2010-5/2010; Claimant also contends that DHS owes her a \$116 FAP benefit supplement for 2/2010.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp 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 (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT).

For non-income changes which result in a FAP benefit increase, DHS specialists are directed to complete the FAP eligibility determination and required case actions in time to affect the benefit month that occurs ten days after the change is reported. BAM 220 at 5. In the present, case, Claimant reported to DHS on 2/3/10 moving into a new residence and paying an increased rental obligation of \$425/month. The benefit month that occurred ten days after Claimant reported the change is 3/2010. Thus, 3/2010 is the appropriate month to begin budgeting Claimant's rental obligation.

Claimant contends that DHS should have known that she had a \$425/month rental obligation prior to 2/3/10 because DHS assisted Claimant with the move-in costs through the State Emergency Relief program. Claimant further contends that since DHS knew of the change prior to 2/3/10 then Claimant's reporting date could have been early enough to affect her 2/2010 FAP benefits.

Though DHS assisted Claimant with the costs of moving to a new residence, an SER approval is not the equivalent of reporting a change. Approving Claimant for an SER does not alert DHS when Claimant would move into the new residence. Theoretically, Claimant might not have moved in for several weeks because the landlord wanted to wait for the SER payment check rather than rely on the DHS promise to pay. Claimant's landlord might have been fixing up the rental property, causing a delay for Claimant to move. It is found that approving Claimant for SER to move into a new residence is not the equivalent of reporting a rental obligation. Accordingly, it is also found that DHS properly did not issue Claimant a FAP benefits supplement for 2/2010.

It was not disputed that DHS should have budgeted Claimant's \$425/month rental obligation to affect FAP benefit months 3/2010-5/2010. It was also not disputed that the rental obligation created a \$116/month difference in Claimant's FAP benefits. Thus, Claimant unquestionably should have received a total of \$348 more in FAP benefits from 3/2010-5/2010.

DHS contends that they are withholding the \$348 FAP supplement pending an investigation based on an alleged failure by Claimant to timely report employment income. The failure by DHS to timely supplement Claimant's FAP benefits to which she was entitled is inappropriate.

Based on Claimant's reporting date of her rental obligation, Claimant's FAP benefits should have been increased effective 3/2010. There is no basis in DHS policy to justify a further delay to issue Claimant FAP benefits to which she was entitled.

Secondly, there is no relationship between the DHS failure to timely process Claimant's increased rent obligation and the allegation that Claimant failed to timely report employment income. The months affected by the investigation and the FAP supplement are not even the same benefit months.

Lastly, DHS can always recoup FAP benefits if it is later established that Claimant received FAP benefits to which she was not entitled. Thus, DHS would suffer no harm by issuing a FAP supplement To Claimant now even if FAP benefits are later recouped. It is found that DHS that Claimant is entitled to immediate supplement of \$348 in FAP benefits.


DECISION AND ORDER

The actions taken by DHS are partially AFFIRMED. The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly did not increase Claimant's 2/2010 FAP benefits based on Claimant's 2/3/10 change in rent obligation.

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The actions taken by DHS are partially REVERSED. The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly failed to issue a FAP benefits supplement to Claimant due to the DHS failure to timely budget Claimant's rent obligation. It is ordered that DHS shall issue a FAP benefit supplement of \$348 for FAP benefit months 3/2010-5/2010.

/s/



Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: September 30, 2010

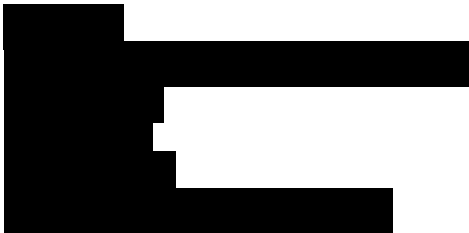
Date Mailed: September 30, 2010

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 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.

CG/hw

cc:



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