

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: 2010-688
Issue No: 2031, 3003
[REDACTED]
Load No: [REDACTED]
Hearing Date: 12/17/09
Mecosta 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 claimant's request for a hearing. After due notice, an in-person hearing was held.

ISSUE

Did the DHS meet its burden of proof to show how it calculated claimant's Medicaid, QMB, and FAP benefits?

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 DHS Hearing Summary indicates that it processed claimant's application on 8/3/09 and opened a Medicaid deductible case.
2. On 8/11/09, claimant requested a hearing. The Hearing Summary states:

I reran the budget to make sure I had run it correctly and found an error. It reduced her FAP benefits. She requested another hearing and accused me of ignoring her medical bills, not budgeting her property taxes, putting her life at risk and slapping her in the face and enjoying it. I did none of those things. Her deductible is \$494 and the medical bills she presented totaled \$339.71 for the month of May. Hearing Summary dated 9/16/09.

3. At the Administrative Hearing, the Department was unable to explain the budgets, including what income, assets, and/or deductions were applied. The Department was unable to explain or identify the applicable policy and procedure used in calculating eligibility.
4. Claimant, in part, wanted an administrative hearing to make numerous complaints about the conduct of State Employees.

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 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).

First, claimant's hearing request and claimant's statements at the administrative hearing spent much time focusing on the conduct of State employees and the desire to make complaints. With regards to a review by an Administrative Law Judge as to the conduct of a State employee, MAC R 400.903(5) lays out instances where recipients of assistance have a right to an administrative hearing with regards to personnel problems or disagreements. Specifically, there is no right to have an ALJ review the conduct of the State employee – it is not a hearable issue:

A complaint as to alleged misconduct and mistreatment by State employees shall not be considered through the administrative hearing process, but shall be referred to the Department personnel director. MAC R400.903(5).

PAM Item 105 - Rights and Responsibilities lays out situations where an individual can make a general complaint about matters other than the right to apply, non-discrimination or hearing issues. Written complaints can be sent to:

Michigan Department of Human Services
Office of Inquiry and Concerns
235 S. Grand Avenue
P.O. Box 30037
Lansing, Michigan 48909

With regards to FAP, clients may send complaints about the FAP program to the FNS Regional Office:

US Department of Agriculture
FNS Midwest Regional Office
77 W. Jackson Blvd., 20th Floor
Chicago, Illinois 60604-3507

Regarding claimant's remaining substantive complaints, in general, individuals who apply for assistance have the burden to establish that they are eligible. However, the Department has the burden of going forth with evidence showing the budgets and/or calculations used in determining eligibility.

At this administrative hearing, the Department was unable to articulate how it calculated claimant's budgets. Nor was the Department able to identify the DHS Policy and Procedure applicable to each budget. It is noted that the Department indicated that there was an error. However, it was not clear at the administrative hearing how the error occurred, how the Department caught the error, or how it was specifically corrected.

Pursuant to BAM Item 600, general evidentiary rules, and the Administrative Hearings Handbook, the Department has the burden of proof in providing adequate evidence to establish the facts they used in this case in making its determinations. The Department failed to do so. Claimant consequently did not have enough evidence to review and/or refute the evidence presented by the Department. Thus, this Administrative Law Judge orders the Department to recalculate the claimant's eligibility and to issue a statement to claimant specifically identifying what income and what deductions the Department used in calculating eligibility. The DHS is to specifically address if it is using rental income and/or property taxes in the budget and what policy specifically is applicable to the budgets with regards to the rental income and the property taxes, if not already done. Claimant shall retain the right to a hearing for 90 days from the date of the new notice from the Department indicating claimant's MA, QMB, and FAP eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department has failed to establish its burden of proof at the administrative hearing.

Accordingly, the department is ordered to recalculate claimant's MA, QMB, and FAP eligibility. The department shall issue a new notice to claimant informing her as to the amount of eligibility for each of these programs and to specifically state in a narrative form what expenses, income, and deductions the DHS applied in calculating claimant's eligibility. The department shall also identify what DHS policy and procedure items specifically applies to each budget.

Claimant shall retain the right to a hearing for 90 days from the date of the new notice should she dispute the outcome.

/s/ _____
Janice Spodarek
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 10/15/10 _____

Date Mailed: 10/18/10 _____

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 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 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.

JS/le

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