

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.: 2011-1338
Issue No.: 1010
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: November 1, 2010
DHS County: Oakland (02)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant's request for a hearing. After due notice, a telephone hearing was held on November 1, 2010. Claimant appeared and testified. [REDACTED]

[REDACTED],
appeared and testified on behalf of DHS.

ISSUE

Whether DHS properly imposed one-month Family Independence Program (FIP) and Food Assistance Program (FAP) penalties on Claimant for failure to cooperate with child support verification procedures?

FINDINGS OF FACT

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

1. In 2010, Claimant received FIP and FAP benefits.
2. On March 11, 2010, DHS requested information relating to paternity and/or child support from Claimant.
3. Claimant's deadline for providing this information was April 20, 2010. Claimant failed to comply.
4. On April 29, 2010, DHS requested information relating to paternity and/or child support from Claimant.

5. Claimant's deadline for providing this information was June 11, 2010. Claimant failed to comply.
6. On June 19, 2010, DHS issued a notice stating that Claimant was not in compliance with program requirements.
7. On or before June 30, 2010, Claimant provided DHS with the required information.
8. On June 30, 2010, DHS issued a "Cooperation Notice," stating that effective June 30, 2010, Claimant was considered to be cooperating in establishing paternity and/or securing child support.
9. On August 1, 2010, DHS imposed a one-month penalty on Claimant. Claimant's FIP benefits and her portion of FAP benefits, but not her child's FAP benefits, were withheld for one month, August 2010.
10. On August 9, 2010, and September 14, 2010, Claimant filed hearing request notices with DHS.

CONCLUSIONS OF LAW

FIP was established by the U.S. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* DHS administers the FIP program pursuant to MCL 400.10, *et seq.*, and Michigan Administrative Code Rules (MACR) 400.3101-400.3131. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

FAP was established by the U.S. Food Stamp Act of 1977 and is implemented by federal regulations in Title 7 of the Code of Federal Regulations. DHS administers FAP pursuant to MCL 400.10 *et seq.*, and MACR Rules 400.3001-400.3015. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). *Id.*

In this case, DHS imposed a one-month penalty, loss of benefits, citing as its authority BEM Item 255, "Child Support." I agree that this manual Item is the appropriate legal authority to use in deciding the parties' rights in this case.

The philosophy statement at the beginning of BEM 255 consists of two sentences:

CHILD SUPPORT

DEPARTMENT PHILOSOPHY

Families are strengthened when children's needs are met. Parents have a responsibility to meet their children's needs by providing support and/or cooperating with the department including the Office of Child Support (OCS), the Friend of the Court (FOC) and the prosecuting attorney to establish paternity and/or obtain support from an absent parent. BEM 255, p. 1.

I have reviewed BEM 255, consisting of sixteen pages, in its entirety. I find that this section does not define the word "cooperate" and delegates to the DHS Office of Child Support (OCS) the full administration of the paternity and child support program including the determination of what the term "cooperation" means.

I find that this means that, unless OCS communicates to the DHS local office that a client has failed to cooperate, a DHS local office, pursuant to BEM 255, does not have the authority to make that determination on its own. I take this section also to mean that, without OCS documentation that a failure to cooperate has occurred, DHS may not take further action such as imposing penalties, terminating or denying benefits.

I also conclude that BEM 255 does not specify any time periods or deadlines by which cooperation must be achieved. I believe that this omission is intentional because of the difficulties of establishing paternity and processing child support. I believe this omission is consistent with the philosophy of DHS quoted above, which is to strengthen families and encourage cooperation with the child support system, whether it takes a long time or not.

In this case, it is undisputed that OCS issued a Cooperation Notice on June 30, 2010. I find that this Cooperation Notice establishes that Claimant fully cooperated with OCS. In this case, OCS never determined that Claimant failed to cooperate. As BEM 255 delegates to OCS the authority to make the determination about cooperation, I find and conclude that DHS erred in deciding through other channels that there was a failure of cooperation. I find that DHS erred when it penalized Claimant for failing to cooperate without an OCS determination to that effect.

I find and determine that DHS erred in imposing one-month FIP and FAP penalties in this case. DHS is hereby REVERSED. DHS is ORDERED to process and provide an appropriate supplemental payment to Claimant for FIP and FAP benefits for the month of August 2010.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides and concludes that DHS is REVERSED. It is ORDERED that DHS shall process and provide an appropriate supplemental payment of FIP and FAP benefits to Claimant in accordance with all DHS policies and procedures.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 8, 2010

Date Mailed: November 9, 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 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.

JL/pf

cc:

