

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.: 2011-1792
Issue No.: 3012
Case No.: [REDACTED]
Hearing Date: January 5, 2011
Wayne County DHS (17)

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 January 5, 2011. The claimant appeared and testified; [REDACTED] from [REDACTED] appeared as Claimant's authorized hearing representative. On behalf of Department of Human Services (DHS), [REDACTED], Manager, and [REDACTED], Specialist, appeared and testified.

ISSUE

Whether DHS properly processed Claimant's reported change of the addition of foster children to her household to timely affect Claimant's 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. Claimant was an ongoing FAP benefit recipient.
2. On 8/25/10, Claimant reported adding four foster children to her household by way of an Assistance Application for Family Independence Program (FIP) benefits.
3. At the time of claimant's 8/25/10 Assistance Application, the four foster children were active FAP benefit recipients on their biological mother's FAP benefits case.
4. DHS added the foster children to Claimant's FAP benefits case to affect Claimant's 11/2010 FAP benefit issuance.

5. On 9/17/10, Claimant requested a hearing concerning some unspecified threat of closure to Claimant's case; at the hearing, Claimant testified that she is actually disputing the failure by DHS to add the foster children to Claimant's FAP benefits sooner than 11/2010.

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 (formerly known as the Family Independence Agency) administers the FAP program pursuant to CML 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 Bridges Reference Manual (BRM).

BAM 600 lists the circumstances in which a hearing may be granted. The circumstances are: denial of an application and/or supplemental payments, reduction in the amount of program benefits or service, suspension or termination of program benefits or service restrictions under which benefits or services are provided or delay of any action beyond standards of promptness. BAM 600 at 3.

In the present case, Claimant requested a hearing based on some unspecified threat to terminate her FAP benefits. There was no evidence presented indicating that DHS took or is currently threatening an action to Claimant's benefits. Claimant's representative framed the issue as DHS inaction on Claimant's reported 8/25/10 change of foster children to her household. Claimant's hearing request made no reference to this issue. The jurisdiction of the undersigned is limited to those issues presented within the hearing request. Based on Claimant's written hearing request, it is questionable whether Claimant requested a hearing concerning an issue of the timeliness of the DHS processing of Claimant's reported change. The undersigned is inclined to give Claimant the benefit of the doubt and to find that the issue was properly noticed.

Claimant's representative's primary argument was an ambitious one; she contended that regardless of DHS regulations, DHS is responsible for providing immediate benefits to clients that accept foster children because DHS is responsible for the placement of those foster children. Without consideration of the fairness of DHS policy, the undersigned is not inclined to adopt Claimant's contention. DHS regulations are set by higher authorities than the undersigned. Whether a DHS regulation is fair or unfair is not within the authority of the undersigned to consider. Claimant's contention is better suited for consideration by the administrative executive branch, not the judicial one. The undersigned may only consider whether DHS followed their own policies in determining

Claimant's benefit eligibility. The remainder of this decision is dedicated to that consideration.

Specialists must act on a change affecting FAP benefits within 10 days of the reported change. BAM 220 at 5. Specialists must act on a change affecting FIP benefits within 15 days of the reported change. *Id.* "Act on" does not necessarily require that the change be processed to completion. The undersigned interprets the meaning of these requirements to mean that the specialist must begin the process of the change within that timeframe. The process will depend on the circumstances of the reported change.

In the present case, Claimant reported a change that required adding four foster children to her FAP benefit case. At the time Claimant reported the change, the foster children were actively receiving benefits on a case where their biological mother was the grantee.

A person must not participate as a member of more than one FAP group in any given month. BEM 212 at 1. This policy is reiterated separately as "A person cannot be a member of more than one FAP Certified Group in any month." BEM 222 at 2. Thus, before adding the children on Claimant's FAP benefits case, the children had to be removed from their biological mother's FAP benefits case.

DHS policy outlines the necessary steps for this process. The first step for DHS would have been to inform the specialist of the biological mother that an application was submitted disputing the mother's custody of the children and to forward any documents supporting the custody change to that specialist. The specialist of the biological mother would have 10-15 days to mail a Verification Checklist to the biological mother requesting documents which supported her custody of the children. The Verification Checklist must allow 10 days for return of the documents. BAM 130 at 5. After the due date for the checklist, DHS must evaluate the documents submitted by each person claiming custody and determine which benefits case the children rightly belong. In the present case, there was no dispute as the biological mother did not claim to have custody. Nevertheless, the mother is entitled to timely notice of the benefit reduction before group members are removed from the case. A timely notice is mailed at least 11 days before the intended negative action takes effect. BAM 220 at 4. Thus, a process of approximately 45 days is appropriate for DHS to fully evaluate disputes in primary caretaker. After this process, the removed group members can be added to a benefit case effective the month following the negative action date.

In the present case, Claimant reported a FAP benefit change on 8/25/10 by listing the foster children on an Assistance Application for FIP benefits. Adding 45 days to 8/25/10 would create an approximate target date of 10/8/10 for the change to be effective. Since DHS may not affect FAP benefits in a month already underway, the proper effective month for the children to be added to Claimant's FAP benefits case would be 11/2010,

20111792/CG

the month that DHS did affect Claimant's FAP benefits. It is found that DHS properly processed the reported addition of foster children to Claimant's FAP benefits case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly and timely processed Claimant's reported change of foster children added to her household to affect Claimant's FAP benefits. The actions taken by DHS are AFFIRMED.

Christian Gardocki

Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 1/18/2011

Date Mailed: 1/18/2011

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 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/jlg

cc:

A large black rectangular redaction box covering several lines of text in the cc field.