

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.: 2011-20613
Issue Nos.: 1021, 2018, 3019
Case No.: [REDACTED]
Hearing Date: March 23, 2011
DHS County: Oakland (63-02)

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 [REDACTED] request for a hearing. After due notice, a telephone hearing was held on March 23, 2011. Claimant appeared and testified. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether Claimant cooperated with DHS in processing his application for Family Independence Program (FIP), Food Assistance Program (FAP) and Medical Assistance (MA or Medicaid) benefits?

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. On January 6, 2011, Claimant applied for FIP, FAP and MA benefits with DHS.
2. On January 12, 2011, DHS sent Claimant a Verification Checklist requesting income information for December 2010 with a due date of January 24, 2011.
3. Also on January 12, 2011, DHS sent a Verification of Employment form to Claimant's employer requesting income information for December 2010, with a due date of January 24, 2011.

4. On January 24, 2011, Claimant submitted to DHS his December 10 and 17, 2010, paystubs showing the number of hours worked, the rate of pay, and the net income per week.
5. On January 25, 2010, DHS granted Claimant an extension of six days to January 31, 2011, for Claimant to provide the additional information needed, i.e., his gross pay.
6. On or before January 31, 2011, Claimant reported to DHS that he did not possess gross pay records and the employer would not cooperate in providing gross pay information.
7. Claimant's gross earnings for the five pay periods in December (December 3, 10, 17, 24 and 31) are \$223.50, \$180.66, \$134.10, \$74.50 and \$149 respectively.
8. On February 1, 2011, DHS denied Claimant's application.
9. On February 11, 2011, Claimant filed a Request for a Hearing 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 United States Code 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 (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 the FAP program pursuant to MCL 400.10 *et seq.* and MACR 400.3001-400.3015. DHS' policies are found in BAM, BEM and RFT. *Id.*

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the U.S. Code of Federal Regulations. DHS administers MA pursuant to MCL 400.10 *et seq.* and MCL 400.105. DHS' policies are found in BAM, BEM and RFT. *Id.*

The DHS manuals are the policies and procedures that DHS officially created for its own use. While the manuals are not laws created by the U.S. Congress or the Michigan Legislature, they constitute the legal authority which DHS must follow. It is to the

manuals that I look now in order to see what policy applies in this case. After setting forth what the applicable policy Items are, I will examine whether they were followed in this case.

In this case, there are three DHS policies to consider: BAM 105, "Rights and Responsibilities," BAM 130, "Verification and Collateral Contacts," and BEM 501, "Income From Employment." I have considered all three of these Items in reaching my decision in this case.

The first of these, BAM 105, "Rights and Responsibilities," requires DHS to administer its programs responsibly so as to protect clients' rights. At the outset, it states:

RIGHTS AND RESPONSIBILITIES

DEPARTMENT POLICY

All Programs

Clients have rights and responsibilities as specified in this item.

The local office must do **all** of the following:

- Determine eligibility.
- Calculate the level of benefits.
- Protect client rights.

BAM 105, p. 1 (bold print in original).

I read this opening section of BAM 105 to mean that DHS must fulfill these duties, and DHS is subject to judicial review of its fulfillment of these duties. If it is found that DHS failed in any duty to the client, it has committed error.

In addition, I read BAM 105 to mean that as long as the client is cooperating, DHS can and should be flexible in its requests for verification. On page 5 it states:

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of necessary forms. See Refusal to Cooperate Penalties in this Item.... Allow the client at least 10 days (or other timeframe specified in policy) to obtain the needed information. *Id.*, p. 5.

I have examined all of the evidence and the testimony in reaching my decision. Based on all of the evidence and the testimony, I find and determine that Claimant cooperated fully with DHS at all times. Claimant provided what income information he had in a timely fashion, and when he was given an extension, he reported back in a timely fashion as well. At the hearing, he gave credible and un rebutted testimony supplying

the number of hours worked for the weeks in December for which he was paid in cash (December 3, 24 and 31). I accept his testimony and find Claimant has been fully cooperative as required by BAM 105.

However, the BAM 105 requirement that DHS protect clients' rights has not been fulfilled. First, DHS erred in that it failed to give Claimant a ten-day extension and provided him with only a six-day extension, from January 25, 2011 to January 31, 2011. This is directly in violation of BAM 105, and it also violates the second Item relevant to this case, BAM 130, "Verification and Collateral Contacts."

BAM 130 was cited to me by DHS in its Hearing Summary, and it requires a ten-day extension for FIP and FAP verification. More importantly, BAM 130 requires up to three extensions of any length of time for Medicaid applications. I find and conclude that it is clear DHS acted prematurely and did not protect the client's rights to obtain information when these timelines were not enforced. I find and conclude that DHS erred in failing to follow its own timelines, which, in and of themselves, are the minimum rights to which Claimant is entitled.

Claimant is also entitled to the procedure set forth in BAM 130, that if the income cannot be verified after a reasonable effort, DHS may use the "best available information," or if there is no information, DHS may use its "best judgment." In this case, the missing information was gross income. Having reviewed all of the evidence and testimony, I find and determine that DHS and Claimant made a reasonable effort to obtain the information and that DHS erred in not then using the "best available information" to determine Claimant's gross income. I find and conclude that this procedure is required by BAM 130 and, as it was not observed, a remedy is appropriate.

Third and last, I consider the policy set forth in BEM 501, "Income From Employment." This Item presents the requirements for verification of earned income. BEM 501 states that an employer's refusal to cooperate should not prevent a client from obtaining assistance.

INCOME FROM EMPLOYMENT

VERIFICATION REQUIREMENTS

ALL TOA [TYPES OF ASSISTANCE]

...

Do not deny or terminate assistance because an employer or other source refuses to verify income. BEM 501, p. 6.

Having reviewed all of the evidence and testimony in this case, I find and determine that this is exactly what DHS has done here, and I decide that this is error.

In addition, another section of BEM 501 applies here, and this is a portion that states that DHS can verify wages, salaries and commissions when employer-generated work schedules, pay frequency, pay dates, and the client's rate of pay are available to determine income. I find that this is exactly the case herein, as the Claimant's work schedule is known for two of the five pay periods in December (December 10 and 17), and he has given testimony as to the number of hours he worked in the other three weeks (December 3, 24 and 31). Also, Claimant's two paystubs (December 10 and 17) show Claimant's rate of pay (\$7.45/hr.), pay dates, and the number of hours worked.

In conclusion, based on the above findings of fact and conclusions of law, I conclude and determine that DHS is REVERSED. DHS is ORDERED to reinstate and process Claimant's FIP, FAP and MA application of January 6, 2011, and determine his eligibility for all three benefits programs from January 6, 2011, to the present in accordance with all DHS policies and procedures.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that DHS is REVERSED. IT IS ORDERED that DHS shall reinstate and reprocess Claimant's FIP, FAP and MA application of January 6, 2011, determine Claimant's eligibility, and provide appropriate supplemental retroactive benefits effective January 6, 2011, in accordance with DHS policies and procedures.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 31, 2011

Date Mailed: April 4, 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 90 days of the filing of the original request.

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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:

