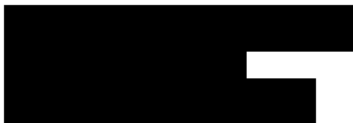


STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No.: 2011-24304
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: April 11, 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 April 11, 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 providing verification in support of his Application for Food Assistance Program (FAP) 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 7, 2011, Claimant applied for FAP benefits with DHS.
2. Effective January 1, 2011, DHS issued FAP benefits of \$131 per month to Claimant.
3. On January 10, 2011, DHS sent Claimant a Verification of Employment form, requesting Claimant's "Last 30 days of check stubs or earning statements."
4. Claimant's former employer attempted to call DHS, but the DHS Specialist's mailbox was full and the employer could not leave a message.

5. Claimant attempted to call DHS on three different days, but the DHS Specialist's mailbox was full and he could not leave a message.
6. On January 21, 2011, Claimant submitted the Verification form unsigned to DHS. The form states, "Did not work in Dec (sic) due to eviction (sic) from apt."
7. After January 21, 2011, DHS made no attempt to contact Claimant for further verification.
8. Effective January 27, 2011, DHS terminated Claimant's FAP benefits.
9. On February 9, 2011, Claimant filed a Request for a Hearing with DHS.
10. Although Claimant asked in his Hearing Request that his FAP benefits be continued until the hearing is decided, DHS did not provide Claimant with continuing benefits.

CONCLUSIONS OF LAW

FAP was established by the 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 Michigan Administrative Code Rules 400.3001-400.3015. Department 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.

The 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 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 item is, I will examine whether it was in fact followed in this case.

I find that BAM 105, "Rights and Responsibilities," is the applicable item in this case. BAM 105 requires DHS to administer its programs in a responsible manner to protect clients' rights.

At the outset, BAM 105 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 must protect client's rights. Stated another way, unless the client refuses to cooperate, DHS is obligated to protect client rights. BAM 105 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 section.... Allow the client at least 10 days (or other timeframe specified in policy) to obtain the needed information. *Id.*, p. 5.

Having identified the relevant legal authority for my decision, I now proceed to my analysis of how the law applies to the facts of the case at hand. In its Hearing Summary, DHS states that Claimant's verification was "not completed by the employer by the due date of 1/20/11." DHS is not taking the position that Claimant refused to cooperate, either in its written Hearing Summary or by its testimony at the April 11, 2011, Administrative Hearing.

I have reviewed all of the evidence and testimony in this case and I find that Claimant cooperated fully with DHS. First, the DHS form asked for information for the previous thirty days, and Claimant gave them that information. Also, this information was consistent with information DHS already had, that Claimant was last employed in October 2010 and that the taxable earnings on his 2010 W-2 were approximately \$500.

Second, in the DHS Hearing Summary, DHS' first concern is that the form was not completed by the employer; however, the form is unsigned and contains nothing by which to identify who really filled it out. I find DHS' position to be unreasonable given

that the document is not signed and further inquiry would be needed to know who wrote the information on the form. DHS, however, did not take such a step.

Third, DHS writes in the Hearing Summary that the Verification was not received in a timely fashion. While the form is time-stamped January 21, 2011, DHS presented no testimony to verify the accuracy of the time-stamped date on the form, and I find it is entirely possible that it was submitted in a timely fashion on January 20, but was not time-stamped until the next day. In any event, I find that a verification that is provided one day late is within reasonable limits, and I find Claimant fulfilled his duty to cooperate and has not forfeited his right to benefits because he is a day late.

To summarize, applying BAM 105 to this case, I find and determine that Claimant gave full cooperation to DHS in providing the documentation requested. I find and determine that DHS has a duty to accept the verification, thereby protecting the client's rights. I find and conclude that in this case, DHS should have used "the best available information" it had on which to base a decision.

In conclusion, as Claimant was fully cooperative and did not refuse to cooperate with the verification process, I find and conclude that DHS erred in that it failed to protect the client's right to benefits.

I now turn to a second error that DHS made in this case, and that is that DHS denied Claimant's right to continued benefits up to the date of the hearing decision. I find that on January 27, 2010, DHS acted incorrectly in closing Claimant's ongoing FAP benefits, thereby denying him a chance to ask in his hearing request that FAP benefits be continued up to the date of the hearing decision. DHS could cite no authority for this procedure. I note that in this case, Claimant was not denied expedited service; to the contrary, DHS issued expedited benefits to Claimant. Once he became a recipient of FAP benefits, Claimant was no longer merely an applicant and was entitled to timely notice that his benefits would be terminated. BAM 220, "Case Actions."


BAM 220, "Case Actions," states on page 4 that in all FAP cases except for eight specific exceptions, timely notice must be given to the Claimant. Expedited service is not one of the eight exceptions. I therefore find and conclude that DHS wrongfully terminated Claimant's benefits on January 31, 2011, and a remedy shall be provided.

In conclusion, based on the findings of fact and conclusions of law above, I decide and determine that DHS has failed to prove by clear and convincing evidence that Claimant refused to produce verification of loss of employment. I find and determine further that Claimant did produce verification of loss of employment. DHS erred in this case by failing to accept Claimant's verification, and pursuant to BAM 105, DHS has a duty to accept it.

DHS is REVERSED. DHS is ORDERED to reopen and reprocess Claimant's FAP benefits and provide Claimant with all supplemental retroactive benefits to which he is entitled as of February 1, 2011, or other appropriate date. All steps shall be taken 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 HEREBY ORDERED that DHS shall reopen and reprocess Claimant's FAP benefits and provide him with all supplemental retroactive benefits to which he is entitled effective February 1, 2011, or other appropriate date. All steps shall be taken in accordance with DHS policies and procedures.



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

Date Signed: April 21, 2011

Date Mailed: April 25, 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.

JL/pf

cc:

