

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-28531
Issue Nos.: 2001, 3008
Case No.: [REDACTED]
Hearing Date: May 12, 2011
DHS County: Macomb (50-20)

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 May 12, 2011. Claimant appeared and testified. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUES

1. Whether Claimant cooperated with DHS in providing verification in support of his Application for Food Assistance Program (FAP) benefits?
2. Whether Claimant applied for the Adult Medical Program (AMP) of the Medical Assistance (MA or Medicaid) program, during a time that the AMP program was accepting new applicants?

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 February 28, 2011, Claimant applied for FAP and AMP benefits with DHS.
2. At the time, AMP was not accepting new enrollments.
3. On his application, Claimant wrote that his income from self-employment as a landscaper was \$250.00.

4. In fact, Claimant had no income for the previous ninety days (December 2010 and January-February 2011).
5. On March 5, 2011, Claimant participated in a telephone interview with DHS.
6. On March 16 and 18, 2011, Claimant returned two sets of Self-Employment Income and Expense Statement Forms to DHS. The forms were left blank.
7. On March 22, 2011, DHS issued a Notice of Case Action denying FAP and AMP benefits to Claimant, stating that the reason for the denial was his failure to verify his income from self-employment.
8. On April 7, 2011, Claimant filed a Request for a Hearing with DHS.

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 FAP pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3001-400.3015. 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.

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.*

AMP was established by Title XXI of the Social Security Act, Sec. (1115)(a)(1), and is administered by DHS pursuant to MCL 400.10 *et seq.* DHS' policies are contained in BAM, BEM and RFT. *Id.*

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 this case, 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.

Notwithstanding DHS' position, I have reviewed all of the evidence and testimony in this case, and I find that Claimant cooperated fully with DHS. Claimant participated in the March 5, 2011, interview and returned both sets of verification forms with the correct information, i.e., that he had no income to report for the past ninety days. The DHS Specialist notes in her notes of the March 5 interview, and I quote, "Income Self Employed odd jobs – Landscaping apx \$250/mo." I find and determine that Claimant was cooperative and provided complete information to DHS in this matter. Based on the testimony at the hearing, I believe that Claimant erroneously communicated his income information. At the hearing, Claimant clarified his income situation, and I find

that his testimony also supports a conclusion that he is fully cooperative, he recognizes his error in communication, and wishes to correct the error.

Also, DHS writes in the Hearing Summary that the Verifications were not received in a timely fashion. I find and conclude that this statement is inaccurate in the following respect. DHS sent Verification Checklists to Claimant on March 2 and March 5, 2011. The March 2 Verification Checklist had a return date of March 14, which is twelve days after the printout date on the checklist. DHS did not provide the March 5 checklist to Michigan Administrative Hearing System (MAHS), but, assuming that it also contained a deadline twelve days after the computer printout date, it would have been due March 16, 2011.

As it happened, the March 2 material, which is the first set, was received on March 16, 2011, which is the due date for the second set. As these two sets of materials are the same, I find that DHS' receipt of one of these sets on the second deadline date meets the deadline requirements of the program. Accordingly, based on all of the evidence and testimony as a whole, I find that Claimant cooperated with the Verification Checklist deadline requirement.

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. DHS is REVERSED with regard to its denial of Claimant's FAP application.

I now turn to the second issue in this case, which is whether Claimant's application for the AMP program was properly considered in accordance with DHS policy and procedure. I find and conclude that as the AMP program was not accepting new enrollees at the time Claimant applied, DHS acted correctly in denying his application. I AFFIRM DHS' action with regard to the AMP program.

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 income verification. I find and determine further that Claimant did produce verification. 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 PARTIALLY AFFIRMED and PARTIALLY REVERSED. DHS is REVERSED with regard to the denial of Claimant's FAP application. DHS is ORDERED to reopen and reprocess Claimant's FAP application and provide Claimant with all supplemental retroactive benefits to which he is entitled as of February 28, 2011, or other appropriate date. With regard to DHS' denial of Claimant's AMP application, DHS is AFFIRMED and need take no further action.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that DHS is PARTIALLY AFFIRMED and PARTIALLY REVERSED. IT IS HEREBY ORDERED that DHS shall reopen and reprocess Claimant's FAP application and provide him with all supplemental retroactive benefits to which he is entitled effective February 28, 2011, or other appropriate date. IT IS FURTHER ORDERED that DHS is AFFIRMED as to the denial of Claimant's AMP application, and DHS need take no further action with regard to the AMP application. 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: May 16, 2011

Date Mailed: May 16, 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.

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:

