

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-30378
Issue Nos.: 3008, 6015
Case No.: [REDACTED]
Hearing Date: May 18, 2011
DHS County: Macomb (50-36)

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 18, 2011. Claimant appeared and testified. [REDACTED] appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether DHS calculated Claimant cooperated with the requirements of the Food Assistance Program (FAP) and Child Care and Development Program (CDC)?

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, DHS provided FAP benefits to Claimant.
2. In January, 2011, Claimant became employed at [REDACTED].
3. On March 2, 2011, Claimant applied for CDC benefits and provided income information to DHS for February 28-March 13, 2011, and March 14-27, 2011.
4. On April 13, 2011, DHS issued a Notice of Case Action closing Claimant's FAP benefits effective May 1, 2011, and denying CDC benefits to Claimant, for the reason that his income was over the income limits for the two programs.
5. On April 18, 2011, Claimant filed a Request for a Hearing with DHS.

CONCLUSIONS OF LAW

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 Michigan Administrative Code Rules (MACR) 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.

CDC was established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. DHS provides services to adults and children pursuant to MCL 400.14(1) and MACR 400.5001-400.5015. DHS' policies are contained in BAM, BEM and RFT. *Id.*

BAM, BEM and RFT are the policies and procedures 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 item is, I will examine whether it was in fact followed in this case.

I find that BAM 105 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 of BAM 105 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 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, in its written Hearing Summary and at the April 25, 2011, Administrative Hearing, is not taking the position that Claimant refused to cooperate. I agree with DHS on this point.

I have reviewed all of the evidence and testimony in this case as a whole. I find and determine that Claimant did not refuse to cooperate with DHS. I find and determine that Claimant exhibited substantial cooperation when he submitted his two March paystubs, and he shall be given the opportunity to submit subsequent paystubs for April and May 2011 in order that he shall receive any FAP benefits to which he is entitled. In addition, Claimant seeks to present documentation regarding child support income he receives from the mother of his children. As Claimant has fulfilled the cooperation requirement, he shall be given the opportunity to submit his documentation regarding child support income he receives.

In this way, by accepting additional verification records from Claimant, DHS is determining eligibility, calculating benefits, and protecting client rights, as required by BAM 105.

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 cooperate with DHS. DHS is REVERSED because of error in this case, failing to act on Claimant's cooperation, and pursuant to BAM 105 DHS has a duty to do so.

DHS is ORDERED to reopen and reprocess Claimant's FAP benefits and his CDC application and provide Claimant with all supplemental retroactive benefits to which he is entitled. 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 his CDC application, and provide him with any supplemental retroactive benefits to which he is entitled. 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 19, 2011

Date Mailed: May 19, 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:

