

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

IN THE MATTER OF:



Reg. No. 201131483
Issue No. 1022 3014
Case No. [REDACTED]
Hearing Date: June 14, 2011
Wayne County DHS (41)

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 June 14, 2011. The claimant appeared and testified. On behalf of Department of Human Services (DHS), Robert Clay, Specialist, and Alisha McNair, Manager, appeared and testified.

ISSUE

Whether DHS timely processed a change in group composition to affect Claimant's Family Independence Program (FIP), Food Assistance Program (FAP) and Medical Assistance (MA) benefits.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant was an ongoing FIP, FAP and MA benefit recipient.
2. As of 2/7/11, Claimant's son was a benefit recipient on a DHS case at and address and under a caretaker that was not Claimant.
3. On [REDACTED], Claimant's son moved into Claimant's household.
4. On approximately 2/7/11, Claimant reported the addition of her son to her household.
5. On an unspecified date in 2/2011, Claimant timely verified that her son was a member of her household.

6. On 4/21/11, Claimant requested a hearing to have her son added to her case to affect her FIP, FAP and MA benefits effective 2/2011.
7. As of the date of the administrative hearing, DHS has yet to add Claimant's son to affect Claimant's FIP, FAP or MA benefits.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp 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). DHS (formerly known as the Family Independence Agency) administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* DHS administers the FIP pursuant to MCL 400.10, *et seq.* and MAC R 400.3101-3131. DHS policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The undersigned will refer to the DHS regulations in effect as of 2/2011, the month of the DHS decision which Claimant is disputing. Current DHS manuals may be found online at the following URL: <http://www.mfia.state.mi.us/olmweb/ex/html/>.

The primary caretaker is the person who is primarily responsible for the child's day-to-day care and supervision BEM 212 at 1. A child is always in the FAP group of the primary caretaker. *Id* at 3. DHS specialists are required to re-evaluate primary caretaker status when a second caretaker applies for assistance for the same child. *Id* at 4. DHS policy does not give a specific timeframe to re-evaluate primary caretaker status. However, based on the timeframes given for the procedures within the process, a reasonable timeframe can be constructed.

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 type of change that is reported.

In the present case, Claimant reported her son as a new household member. At the time Claimant reported the change, her son was actively receiving benefits on a different DHS case. Thus, before adding her son to Claimant's benefits case, DHS would have had to remove her son from the other benefit case. DHS policy outlines the necessary steps for this process.

The first step for DHS would have been to inform the DHS specialist responsible for the active benefit case that had Claimant's son of the reported change by Claimant. That specialist would have 10-15 days to mail a Verification Checklist to the grantee requesting documents concerning Claimant's son's address. 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 child rightly belongs.

In the present case, it is not known whether DHS attempted to verify Claimant's son's address from the person that had Claimant's son on her benefits case. It is known that in 2/2011, Claimant submitted a document verifying that her child lived with her. DHS accepted Claimant's documents as sufficient to establish that Claimant's son lived with her as of 2/2011.

Accepting Claimant's verification as accurate, the person who is still receiving benefits on behalf of Claimant's son is entitled to timely notice of the benefit reduction removing group members 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 member can be added to a benefit case effective the month following the negative action date.

In the present case, it is known that Claimant first reported the change in her household on approximately 2/7/11. The only explanation DHS gave as to why Claimant's case was not updated was that it required removal from Claimant's son from the other benefit case. DHS gave no explanation as to why this was not done. The DHS excuse is inadequate. DHS has taken four months (and counting) to complete a process that should have taken approximately 45 days. It is irrelevant whether the blame for the lengthiness of the process lies with Claimant's DHS office for failing to adequately communicate the change in custody or with another office for failing to act on the change in information. In either event, the fault lies with DHS. It is found that DHS failed to timely process Claimant's change in household members.

Adding 45 days to the estimated date of the reported change (2/7/11) would create a target month of 4/2011 for the change in household members to become effective. Though Claimant may have established a loss of benefits based on the DHS failure to add her son to her case, it must be determined whether DHS regulations allow for a supplement of FIP and FAP benefits when the son already received benefits on a different case.

Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. BEM 222 at 1. Generally, benefit duplication is not allowed. A person cannot be a member of more than one FAP Certified Group (CG) in any month. *Id.* at 2.

The above policy appears to bar Claimant from receiving benefits for her son when a different grantee already received benefits for her son. The undersigned does not find that the general prohibition on benefit duplication to be applicable to the present case.

First, based on other DHS regulations, it has been established that Claimant should have considered an increase of FIP and FAP benefits for Claimant based on the addition of her son effective 4/2011. When there are conflicting DHS regulations, the undersigned is not inclined to select the controlling policy favorably for DHS since it was their own policies that created the conflict.

Also, if DHS is ordered to add Claimant's son to her FAP benefit determination effective 4/2011, benefit duplication does not have to occur. This finding would not prevent DHS from seeking recoupment against the grantee that improperly received FIP and FAP benefits for Claimant's son; successful recoupment would eliminate the benefit duplication issue. It is found that despite a general prohibition against benefit duplication, Claimant is entitled to a remedy of a FIP and FAP benefit determination effective 4/2011 which includes her son as a group member.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly failed to process Claimant's reported change in group composition. It is ordered that DHS:

- redetermine Claimant's FAP and FIP benefits effective 4/2011 (and ongoing months) to include Claimant's son as a group member;
- supplement Claimant for any FIP and FAP benefits not received as a result of the failure to timely process Claimant's verified change,

The actions taken by DHS are REVERSED.



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

Date Signed: 06/16/11

Date Mailed: 06/20/11

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.

CG/dj

cc:

