

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.: 2011-3188  
Issue No.: 3008  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: November 24, 2010  
DHS County: SSPC-EAST

**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 November 24, 2010. Claimant appeared and testified. [REDACTED]

[REDACTED], appeared and testified on behalf of DHS. [REDACTED], was also present at the hearing.

**ISSUE**

Whether DHS properly processed Claimant's 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 August 26, 2010, Claimant applied for FAP benefits through the DHS SSPC-East Office.
2. On Saturday, September 11, 2010, DHS issued a Verification Checklist, DHS Form 3503, requesting verification of Claimant's mortgage, home insurance, medical expenses, identity, and also her son's income.
3. The Verification Checklist imposed a deadline of Wednesday, September 21, 2010, ten days after the date of the letter, for Claimant to submit verification.

4. On September 19 and 21, 2010, Claimant called DHS to request an extension of one day, but her calls were not returned.
5. On September 22, 2010, Claimant's son faxed all of the required verifications to DHS and received a fax confirmation notice that the documents were transmitted.
6. On September 22, 2010, DHS denied Claimant's application for FAP benefits, stating the reason for the denial as, "You or a group member failed to provide required verification of identity."
7. On October 15, 2010, Claimant filed a notice of hearing request with DHS.

### **CONCLUSIONS OF LAW**

FAP was established by the U.S. Food Stamp Act of 1977 and is implemented by Federal regulations contained 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. 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](http://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 Congress or the Michigan State Legislature, they are 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 is, I will examine whether it was, in fact, followed in this case.

DHS has cited as the legal authority for their action BAM 130, "Verification and Collateral Contacts." I agree that BAM 130 is the appropriate manual Item governing this case. I refer in particular to the paragraph of BAM 130 which discusses timeliness:

#### **Timeliness of Verifications**

##### **CDC, FIP, FAP**

Allow the client 10 calendar days (or other time limit specified in policy) to provide the verification you request. *If the client cannot provide the verification despite a reasonable effort, extend the time limit at least once.*

...

Send a negative action notice when:

- The client indicates refusal to provide a verification, or

- The time period given has elapsed *and the client has **not** made a reasonable effort to provide it.* BAM 130, p. 5 (bold print in original; italics added for emphasis).

I note that the first five words of BAM 130 are, "Allow the client 10 calendar days." In this case, the Checklist was dated Saturday, September 11, 2010. There was no testimony at the hearing that it was actually mailed on that date, but assuming that it was mailed on that date, Claimant would have received it on Monday, September 13, 2010, at the earliest.

September 13 is only eight days before Wednesday, September 21. I therefore conclude and decide that DHS failed to "[a]llow the client 10 calendar days" in which to respond. DHS has committed error in this case by failing to follow BAM 130 and is, accordingly, REVERSED.

I read the plain words of BAM 130 to mean that the client must be given at least ten days to respond. I do not read these five words in BAM 130 to mean that DHS can include the mailing time within the ten days, because the Item is drafted in such a way that it makes the client's need for ten days the important part of the policy. DHS, by including the mailing time in the ten-day period, has in effect reduced the client's ten days in this case to eight days at most.

A maximum of eight days is inferred by the fact that, while a DHS computer may indeed have issued the Checklist on a Saturday, there was no testimony at the hearing that the Checklist issued by a computer on Saturday was put in the mail by a DHS employee on Saturday and picked up by a U.S. Postal Service employee on Saturday. I consider it far more likely that the letter was mailed on Monday, September 13, 2010, causing the letter to be delivered to Claimant on Tuesday the 14<sup>th</sup> at the earliest.

Tuesday, September 14, 2010, is only seven days from the deadline on the Checklist. If, as is far more likely, this is the case, then DHS reduced Claimant's response time by yet another day. In any event, it is clear that Claimant's response time was substantially reduced by DHS' action in this case.

DHS' action in this case is error because it accords DHS' need for file closure greater significance than its own written policy, which gives the customer's needs more importance. BAM 130 does *not* state: "The Department has ten days to close a case." On the contrary, BAM 130 exclusively discusses the client's needs, not the DHS' needs. Indeed, DHS' need for a ten-day turnaround time from issuance date to submission date is nowhere stated.

I consider also in my decision Claimant's testimony that she did, in fact, need more time to submit documents. I have reviewed all of the testimony and evidence in this case.

The DHS case worker who was assigned to this case did not testify at the hearing. I find that Claimant's testimony that she called the worker before the deadline twice to request an extension is credible and un rebutted testimony, and I accept it. Again, as the DHS worker did not testify at the hearing, I find Claimant's testimony that her calls were not returned is credible and un rebutted testimony and I accept it. I find that Claimant needed more time and it was not granted to her.

I also find that Claimant's testimony and evidence is more credible and reliable than that of DHS' testimony at the hearing. I find that DHS' own documentary evidence is inconsistent with its testimony at the hearing. The DHS Notice of Case Action states that the denial is based solely on Claimant's failure to provide verification of her identity. I take this language to mean that all of Claimant's other documentation was received and that it was received in a timely fashion, but that one piece of verification was still needed.

However, at the hearing, DHS testified that *none* of Claimant's verification was received. Faced with this inconsistency, I resolve it in favor of the statement on the Notice, which is a document prepared contemporaneously and in the ordinary course of DHS' business. I accept the language of the Notice as more reliable than the hearing testimony, which was given by a person who was not involved in the case as it progressed, and which is, therefore, not based on firsthand knowledge, and further, which was given at a hearing occurring several weeks after the events of the case.


If Claimant provided all but one document (identification), then Claimant clearly cooperated and "made a reasonable effort" to submit verification. At this point, DHS should have called Claimant to request the one missing document. I find that DHS' failure to make such a call is, unfortunately, consistent with the fact that they did not return Claimant's calls.

I decide, therefore, that DHS error occurred in that DHS failed to allow Claimant a minimum of ten days in which to submit the Checklist. Second, I find that DHS erred when it failed to recognize that Claimant made a reasonable effort to comply with DHS' request.

I decide DHS shall be REVERSED. I determine that Claimant's FAP application shall be reopened and processed, allowing Claimant the opportunity to submit documentation, including at least one submission extension as provided in BAM 130. Such procedures shall be undertaken in accordance with all DHS policy and procedures.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides and determines that DHS shall be REVERSED. IT IS ORDERED that Claimant's FAP application shall be reopened and processed, allowing Claimant a full opportunity to submit verification in accordance with DHS policy and procedures.

  
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Jan Leventer  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: November 29, 2010

Date Mailed: November 29, 2010

**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:

