

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-33333
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: June 6, 2011
DHS County: Macomb (50-12)

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 June 6, 2011. Claimant appeared and testified. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether DHS terminated Claimant's Food Assistance Program (FAP) benefits and reduced Claimant's FAP group benefits in accordance with DHS policies and procedures?

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 [REDACTED] Claimant's son, [REDACTED], was born.
2. In 2011, a DNA paternity test was conducted which established that the man presumed to be [REDACTED] father was not, in fact, his father.
3. Claimant informed DHS' Office of Child Support (OCS) that she was involved with only one man at the time of [REDACTED] birth, and that unless she was date-raped, he had to be the father.
4. Claimant was extremely cooperative with OCS and the [REDACTED] Friend of the Court (FOC).

5. At the request of FOC, Claimant filed felony charges and attended all hearings related to the charges.
6. Claimant is not withholding any information from anyone.
7. As of March 2011, Claimant was receiving \$356 FAP benefits per month.
8. As of March 3, 2011, OCS determined that Claimant was not in compliance with the child support and paternity requirements of the FAP program with regard to her son, [REDACTED].
9. OCS provided no further information on this question.
10. On April 1, 2011, DHS terminated Claimant's FAP benefits for herself and reduced the FAP group benefits. Claimant's FAP benefit for April 2011 was \$136.
11. On April 16, 2011, DHS issued a Notice of Case Action informing Claimant that effective April 1, 2011, her FAP benefits for herself would be terminated and her family's FAP benefits would be reduced.
12. On April 28, 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 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.

BAM, BEM and RFT are the policies and procedures DHS officially created for its own use. While the DHS 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 is, I will examine whether it was in fact followed in this case.

In this case, DHS gave the legal basis for its action in the DHS Hearing Summary it prepared for this Administrative Hearing. I agree with DHS that the manual Item that applies to this case is BEM 255, "Child Support."

BEM 255 states that the Department's Philosophy is as follows:

Families are strengthened when children's needs are met. Parents have a responsibility to meet their children's needs by providing support and/or cooperating with the department including the Office of Child Support (OCS), the Friend of the Court (FOC) and the prosecuting attorney to establish paternity and/or obtain support from an absent parent. BEM 255, p. 1.

Next, Department Policy is stated as follows in BEM 255:

The head of household and the parent of children must comply with all requests for action or information needed to establish paternity and/or obtain child support on behalf of children for whom they receive assistance, unless a claim of good cause for not cooperating has been granted or is pending. *Id.* (bold print added for emphasis).

I have reviewed all of the testimony and the evidence in this case as a whole. I find and determine that Claimant cooperated at all times with the DHS OCS. The record in this case indicates that Claimant has cooperated to the fullest extent with OCS and FOC.

Based on the record before me, I find that DHS erred in this case in finding that Claimant was noncooperative and by terminating and reducing Claimant's and Claimant's group's benefits. I reach my decision first, because the record reflects that Claimant voluntarily assisted many times and second, because there is nothing in the record to indicate that she ever refused to cooperate with DHS. Indeed, there is nothing in the record to indicate that DHS ever actually requested her cooperation, much less that Claimant actually failed to cooperate with DHS.

I find and determine that DHS alleges Claimant refused to cooperate because they disbelieve her and believe she is not being truthful with OCS. Without more evidence, BEM 105 requires DHS to accept the client's statements as truthful until proven otherwise. I find and conclude that a suspicion that a person is being untruthful is not the same thing as a person being uncooperative. BEM 105, "Rights and Responsibilities," requires DHS to protect clients' rights unless they refuse to cooperate, and I find and conclude that that has not happened in this case. BEM 105.


In conclusion, based on the findings of fact and conclusions of law above, I find and determine that DHS erred in failing to follow policy in BEM 255 and BEM 105. I find and determine that DHS made no requests of Claimant, and Claimant did not fail to cooperate with a DHS request for paternity and child support information. I further find and determine that DHS' actions in this case violate the BEM 255 Department Philosophy by failing to acknowledge the extent to which the children's needs were

being met by the parent in this family group. This also violates BEM 105 in that DHS failed to protect the client's right to FAP benefits in this case.

I find and determine that DHS is REVERSED. IT IS ORDERED that DHS shall reverse OCS' decision that Claimant was noncooperative, restore and reinstate Claimant's and Claimant's group's FAP benefits to appropriate levels, and issue any supplemental retroactive payments to which Claimant is entitled. All steps shall be taken in accordance with DHS policies and procedures.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that DHS' action was erroneous and shall be REVERSED. IT IS ORDERED that DHS shall reverse OCS' decision that Claimant was noncooperative, reinstate Claimant's and Claimant's group's FAP benefits to appropriate levels, and provide any retroactive supplementary benefits to which she 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: June 8, 2011

Date Mailed: June 8, 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.

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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:

