

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

IN THE MATTER OF:

[REDACTED] [REDACTED]

Reg. No. 2011-34887
Issue No. 3008
Case No. [REDACTED]
Hearing Date: June 20, 2011
Wayne (15)

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 20, 2011. The Claimant appeared and testified. [REDACTED] Eligibility Specialist, and [REDACTED] Family Independence Manager, appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether Claimant cooperated with DHS in providing verification in support of her Redetermination 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. In 2011, DHS provided Claimant with FAP benefits.
2. On April 4, 2011, Claimant submitted a Redetermination packet to DHS with current income and employment information. She indicated that she worked at a temporary employment agency.
3. On April 21, 2011 DHS sent Claimant a Verification Checklist and a Verification of Employment form, requesting that Claimant have her employer complete the Verification form.

4. Claimant's employer failed to return the form to DHS.
5. On May 3, 2011, DHS issued a Notice of Case Action terminating Claimant's FAP benefits effective June 1, 2011.
6. On May 9, 2011, Claimant filed a Request for a Hearing with DHS.
7. At the Administrative Hearing on June 20, 2011, Claimant submitted the last four paystubs that she had, for March 27, April 3, May 22, and June 12, 2011. She testified that she had no more than two additional paystubs during that time, and that they would have been in May or June.

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 the FAP program pursuant to MCL 400.10 *et seq.*, and Michigan Administrative Code Rules 400.3001-400.3015. Department 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 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).

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I read this opening section of BAM 105 to mean that the Agency must fulfill these duties, and the Agency 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, the Agency must protect client's rights. Stated another way, unless the client refuses to cooperate, the Agency 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 its Hearing Summary DHS states, "FAP closed due to failure to provide required information within specified time." 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.

I have reviewed all of the evidence and testimony in this case and I find and determine that Claimant cooperated fully with DHS. First, Claimant gave the information she had in the Redetermination packet she submitted April 4, 2011, and I find this demonstrates cooperation on Claimant's part. Claimant also testified about her efforts to get information from the employer. Third, Claimant brought her paystubs to the hearing, and was able to present testimony about the only other two possible paystubs she could have received in that time.

I find and determine that as Claimant has cooperated fully, DHS is required to protect her right to benefits. Pursuant to BAM 130, "Verification and Collateral Contacts," DHS is required to use "the best available information" to determine eligibility and benefit allotments. BAM 130, p. 5. Also, DHS should never use a third party's failure to provide information as the basis for refusing FAP benefits to a customer. BAM 105, p. 5.

I find and determine that DHS in this case is in a position to use the best available information and also, to use its best judgment, to arrive at a standard, nonfluctuating monthly income for Claimant. DHS may of course seek additional information as to the dates of employment and other data from Claimant, in order to make the standard monthly income figure as accurate as possible. DHS may also wish to assist the customer by initiating a contact with the employer. BAM 130, pp. 2, 5.

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Finally, BAM 210 requires that if the client is at fault in failing to meet FAP Redetermination standards of promptness, DHS permits 30 days to complete the Redetermination.

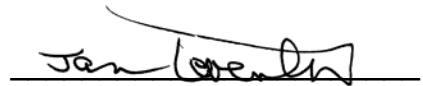
If there is no refusal to cooperate and the group complies by the 30th day, issue benefits within 30 days. BAM 210, p. 13.

This procedure provides extra processing time for Redeterminations, such that clients should not suffer a break in FAP benefits assistance.

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. DHS is ORDERED to reinstate and reprocess Claimant's FAP benefits and provide Claimant with all supplemental retroactive benefits to which she is entitled as of June 1, 2011 or other appropriate date. 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 reinstate and reprocess Claimant's FAP benefits and provide her with supplemental retroactive benefits to which she is entitled as of June 1, 2011 or other appropriate date. 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 21, 2011

Date Mailed: June 22, 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/cl

cc:

