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

IN THE MATTER OF:



Reg. No. 2011-36409

Issue No. 3008 Case No.

Hearing Date:

July 6, 2011 WAYNE (82)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Admi nistrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400. 37 and Claim ant's request for a hearing. After due notice, a telephone hearing was held on July 6, 2011 in Detroit. The Claimant did not appear.

Authorized Hearing Representative, appeared and testified on behalf of Claimant. Darling is the Office Coordinator for AHS (Advocating, Helping and Serving) Community Services in the city of Wayne.

Eligib ility Specialist, appeared and testified on behalf of the Department of Human Service s (DHS).

ISSUE

Whether Claimant cooper ated with DHS verification pr ocedures for Food Assistanc e 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. At all times pertinent to this m atter, AHS has been a n onprofit corporation licensed under the requirements of the U.S. Internal Revenue Service regulation 501(c)(3).
- Claimant's Authorized Representative Darling fa xed the AHS 501(c)(3) documents to DHS in October, 2009 (Claimant's FAP application), October, 2010 (FAP Redetermination Application), and on February 24, 2011 (resubmission for the Redetermination Application).

- 3. DHS never received, or misplaced, or lost, these documents.
- 4. Beginning in 2009, Claimant received FAP benefits of \$200 per month.
- 5. On November 16, 2010, DHS r educed Claimant's F AP benefits to \$16 per month.
- 6. On December 1, 2010, DHS terminated Claimant's FAP benefits.
- 7. Claimant did not rece ive FAP benefits from Dece mber, 2010-March, 2011, a four-month period.
- 8. On May 19, 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 400.300 1-400.3015. Department polic ies are found in Bridges Admi nistrative Manual (BAM), Bridges Eligibility Manual (BEM) and Refe rence Tables (RFT). These manuals are available online at 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 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. Af ter 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 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 cooper ating, the agency can and should be flexible in its requests for verification. On page 5 it states:

Clients mu st coo perate with the lo cal office in determining initial and ongoing eligi bility. This inclu des completion of ne cessary forms. Se e Refusal to Cooperate Penalties in this section... Allow the client at least 10 d ays (or other tim eframe spe cified in poli cy) to obtain the n eeded information. *Id.*, p. 5.

Having identified the relevant legal author ity for my decision, I now proceed to my analysis of how the law applies to the facts of the case at hand. DHS asserts that Claimant failed to provide DHS with verification of AHS' tax-exempt status. In this case DHS is not taking the position that Claimant refused to cooperate, either in its written Hearing Summary or at the July 6, 2011 Administrative Hearing.

I have reviewed all of the eviden ce and testimony in this case as a whole. I find and determine that Claimant did not refuse to cooperate with DHS. As Claimant has fulfilled his duty to cooperate with the Redeterminat ion application process I now consider whether DHS failed to protect the client's rights.

I find and determine that DHS fa iled to preserve Claimant's 501(c)(3) documentation, thereby causing the reduction and termination of Claimant's benefits. I find that agency error in this matter constitutes a failure to protect client rights and must be remedied.

In conclusion, based on the findings of fact and conclusions of law above, I decide and determine that DHS f ailed to protect Claimant 's right to benefits as requir ed by BAM 105. DHS erred and a remedy shall be provided to Claimant. DHS is REVERSED.

DHS is O RDERED to reinstate and reprocess Claim ant's FAP benefits and provide Claimant with all supplemental retroactive benefits to which he is entitled. The Agency shall redetermine Claimant's F AP benefit for November, 2010, and it shall als o redetermine what, if any, FAP benefits Claimant is entitled to for the four-month period of December, 2010-March, 2011. 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, dec ides that DHS is RE VERSED. IT IS HE REBY ORDERED that DHS shall

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reinstate and reprocess Claimant's FAP be nefits and provide him with all supplemental retroactive benefits to which he is entitled for the five months of November, 2010-March, 2011. 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: July 11, 2011

Date Mailed: July 11, 2011

NOTICE: Administrative Hearings may or der 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 Hear ings will not orde rarehearing 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 ti mely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

