

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201144791
Issue No.: 3029
Case No.: [REDACTED]
Hearing Date: August 24, 2011
Wayne County DHS (19)

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 August 24, 2011 from Detroit, Michigan. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUE

Whether DHS properly determined Claimant's Food Assistance Program (FAP) benefit group size as two persons effective 4/2011 due to an employment-related disqualification.

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 part of a household receiving ongoing FAP benefits.
2. Claimant's household included: Claimant, her spouse and her minor child.
3. On 3/26/11, DHS determined FAP benefits effective 4/2011 for Claimant based on a group size of two persons that included Claimant's spouse and Claimant's child.
4. DHS did not include Claimant as a group member, due to an ongoing employment-related disqualification.

5. On or around 3/26/11, Claimant contacted DHS concerning the failure to include Claimant as a household member.
6. DHS failed to respond to Claimant's inquiries.
7. On 7/26/11, Claimant requested a hearing to dispute the failure of DHS to include Claimant as a group member.

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 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 undersigned will refer to the DHS regulations in effect as of 3/2011, 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/>.

BAM 600 contains the DHS policy for administrative hearings including the client deadline to file a hearing request. Generally, clients have 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600 at 4. For FAP benefits only, the client or authorized hearing representative may request a hearing disputing the current level of benefits at any time within the benefit period. *Id.*

It was not disputed that Claimant's FAP benefit period began 4/2011, and that benefit amount reflects Claimant's current benefit level. DHS contended that Claimant's hearing request was untimely because Claimant disputed an adverse action on her FAP benefits more than 90 days after DHS sent notice of the action. The DHS contention would be correct except that Claimant is disputing an action on her current level of FAP benefits. In such a case, the 90 day period does not apply, and Claimant may make the dispute at any time during her FAP benefit period. Thus, Claimant is entitled to dispute the DHS actions regarding her current benefit level. Accordingly, Claimant may dispute the amount of FAP benefits since 4/2011.

Disqualifications for failure to comply without good cause are the same for FAP applicants, recipients and member adds. BEM 233B at 4. For the first occurrence, DHS is to disqualify the person for one month or until compliance, whichever is longer. *Id.* For

a second or subsequent occurrence, DHS is to disqualify the person for six months or until compliance, whichever is longer. *Id.*

A noncompliant person must serve a minimum one-month or six-month disqualification period unless one of the criteria for ending a disqualification early exists. *Id.* at 6. DHS is to end the disqualification early if the noncompliant person:

- complies with work assignments for a cash program, or
- obtains comparable employment in salary or hours to the job which was lost, or
- meets a deferral reason (see below) other than unemployment benefit application/recipient or
- leaves the group. *Id.* at 6-7.

When DHS learns and verifies that the person has met any of the above criteria after a disqualification has taken effect, DHS is to restore benefits beginning the month after the noncompliant person reports meeting the criteria. *Id.* at 7.

As indicated above, clients may be deferred from employment related activities. Clients who meet one of the following reasons are temporarily deferred: age (under 16 or above 60 years; some 16 and 17 year olds may also be deferred), care of child, care of household member, disability, education, pregnancy, Social Security Administration application, substance abuse center treatment or unemployment application/recipient. BEM 230B at 3-5. DHS regulations provide specifics for the requirements of each basis to be deferred from employment-related activities.

After a one-month or six-month disqualification, the noncompliant person must complete a compliance test to become eligible for FAP unless the client is working at least 20 hours per week or meets FAP deferral criteria. *Id.* at 7. If the noncompliant person does not meet the criteria above for ending a disqualification early, a five-day, 20-hour compliance test must be completed before eligibility is regained. *Id.* In addition, the minimum disqualification period must be served. *Id.*

When a disqualified client indicates a willingness to comply, DHS is to provide an opportunity to test his/her compliance. *Id.* DHS is to arrange for testing within 10 workdays of the contact, provided it is no earlier than one month before a minimum disqualification period ends. *Id.* The test consists of five days of employment and/or self-sufficiency-related activities totaling 20 hours. *Id.* A client may elect to do the test with a community service agency. *Id.* If so, DHS is to just verify participation. *Id.*

Local DHS offices have latitude in the design of compliance tests. Examples of activities include: community Service, work Experience, applying for three jobs within 10 days. *Id.* DHS is to use the DHS-402, FAP Compliance Letter and Job Application Log, other employment and/or self-sufficiency-related activities. *Id.* at 8. If the person completes the test, DHS is to recalculate the group's FAP benefit amount with him/her included.

In the present case, DHS assessed a FAP disqualification against Claimant in 2010. Claimant testified that she continually questioned DHS concerning what she could do to end the disqualification. There was no evidence that DHS ever provided Claimant with a proper response. Though DHS should have provided Claimant with information how to end the FAP disqualification in 2010, Claimant is only entitled to question FAP benefit issuances beginning 4/2011 due to the submission date of her hearing request.

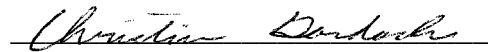
Based on the presented evidence, Claimant has at least two ways to change the FAP disqualification. Claimant stated that she is responsible for taking care of her ill spouse. If Claimant verifies the need, this could be a basis for deferral from the FAP employment requirements. Alternatively, Claimant could end the disqualification by arranging and completing a compliance test. It was not disputed that DHS failed to consider either of the above ways to end or suspend the FAP disqualification. Accordingly, it is found that the failure by DHS to offer a compliance test or to verify a basis for deferral is reversible error concerning Claimant's FAP disqualification since 4/2011.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly failed to offer a compliance test to Claimant or to consider a basis for deferral from employment related activities. It is ordered that:

- (1) DHS request medical documentation from Claimant concerning the need for her to take care of a disabled spouse, or to set up a compliance test for Claimant; and
- (2) DHS shall initiate a recalculation of Claimant's FAP benefits effective 4/2011 including supplementing Claimant for any FAP benefits not received if Claimant is deferred from employment related activities or passes a compliance test.

The actions taken by DHS are REVERSED.


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

Date Signed: August 26, 2011

Date Mailed: August 26, 2011

201144791/CG

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 of the rehearing decision.

CG/hw

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