

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-44983
Issue Nos.: 2006, 3008
Case No.: [REDACTED]
Hearing Date: August 22, 2011
DHS County: Wayne (82-17)

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, which govern the administrative hearing and appeal process, and Claimant's request for a hearing. After due notice, a telephone hearing was held on August 22, 2011, in Detroit, MI. Claimant appeared and testified. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUES

1. Whether DHS properly determined that Claimant was noncooperative with DHS' paternity and child support enforcement efforts?
2. Whether DHS properly denied Food Assistance Program (FAP) benefits to Claimant?
3. Whether DHS properly refused Claimant's request that two of her children be removed from the Medical Assistance (MA or Medicaid) program?
4. Whether DHS properly determined Claimant's countable income for purposes of allotting her FAP amount?

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 2009, Claimant provided the DHS Office of Child Support (OCS) with the names, dates of birth, date of death, and other information, of [REDACTED], the

father of [REDACTED], and [REDACTED], deceased, the father of [REDACTED].

2. On October 30, 2009, DHS made a determination that Claimant was not cooperative with OCS efforts to establish paternity and obtain child support from the fathers of her three children.
3. On or before January 1, 2010, DHS provided Claimant with FAP and MA benefits for herself and her children.
4. On December 1, 2010, DHS reduced Claimant's family group from four members to three members, and reduced her FAP grant from \$497 to \$379.
5. On July 1, 2011, DHS reduced Claimant's FAP from \$379 to \$209.
6. On July 22, 2011, Claimant filed a Request for a Hearing with DHS.

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 FAP 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.

MA was established by Title XIX of the U.S. Social Security Act and is implemented by Title 42 of the U.S. Code of Federal Regulations. DHS administers MA pursuant to MCL 400.10 *et seq.* and MCL 400.105. DHS policies are found in BAM, BEM and RFT. *Id.*

The DHS manuals contain the policies and procedures DHS officially created for its own use. While the DHS policies and procedures are not laws created by the U.S. Congress or the Michigan Legislature, they constitute legal authority which DHS must follow. The manuals must be consulted in order to see what policies apply in this case. After setting forth what the applicable policies are, an analysis as to how they apply to the facts of this case will be presented.

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).

BAM 105 means that DHS must fulfill these duties, and DHS 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, BAM 105 means that as long as the client is cooperating, DHS must protect client's rights. Stated another way, unless the client refuses to cooperate, DHS 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 this decision, it is necessary to apply it to the facts of the case at hand. In its Hearing Summary and also at the Administrative Hearing, DHS asserts that Claimant refused to cooperate. However, DHS submitted no evidence whatsoever to support this conclusion and it must be rejected. DHS' conclusion is especially unwarranted in light of Claimant's credible and unrebutted testimony that she gave DHS information about both fathers. It is therefore concluded and decided that Claimant was cooperative, and DHS is REVERSED as to this issue. See *also*, BEM 255, "Child Support."

Three remedies are appropriate in light of this judicial determination that Claimant cooperated with OCS. First, DHS must correct its December 1, 2010, deletion of Claimant from the FAP family group by adding her back into the family group, and then adjust her FAP benefits retroactively. Second, DHS must recalculate Claimant's benefits as of July 1, 2011, based on Claimant's current income, and adjust her benefits

accordingly. Third, DHS must process Claimant's request that [REDACTED] be removed from the MA program, as they have medical insurance through their father.


In conclusion, based on the findings of fact and conclusions of law above, DHS erred in that it concluded Claimant was uncooperative with OCS without a factual basis for this conclusion. DHS is REVERSED. DHS is ORDERED to reinstate Claimant as a FAP group member as of December 1, 2010, review and recalculate Claimant's July 1, 2011, FAP allotment using current income information, pay Claimant retroactive supplemental benefits, and remove [REDACTED] from Claimant's MA benefits.

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:

1. Initiate procedures to delete the October 30, 2009, Noncooperation status from Claimant's FAP and MA files, and replace it with Cooperation status.
2. Initiate procedures to reinstate Claimant as a FAP family group member as of December 1, 2010.
3. Initiate procedures to recalculate Claimant's FAP allotment as of July 1, 2011, using Claimant's actual income to make the calculations.
4. Initiate procedures to provide Claimant with all supplemental FAP benefits to which she is entitled retroactively.
5. Initiate procedures to remove [REDACTED] from Claimant's MA benefits case.

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: August 25, 2011

2011-44983/JL

Date Mailed: August 26, 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 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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:

A large black rectangular redaction box covers the names and email addresses of the recipients listed in the 'cc:' field.