

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-4590
Issue No.: 3008
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: December 6, 2010
DHS County: SSPC-East

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 December 6, 2010. Claimant appeared and testified. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether DHS properly denied Claimant's Food Assistance Program (FAP) benefits application?

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 July 8, 2010, Claimant applied for FAP benefits with DHS.
2. August 6, 2010, was Claimant's appointment date for his application interview with DHS.
3. On August 6, 2010, Claimant failed to appear for the interview.
4. On September 7, 2010, DHS denied Claimant's FAP application.
5. On September 20, 2010, Claimant filed a Request for a Hearing with DHS.

6. Also on September 20, 2010, Claimant submitted a handwritten statement to DHS stating, "I missed the first interview because of football practice – but my mother will be available for the next interview- Her name [REDACTED]. Thank you."

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. 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.

The manuals are the policies and procedures that DHS officially created for its own use. While the manuals are not laws created by Congress or the Michigan Legislature, they constitute the 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.

In this case, DHS has cited BAM 115, "Application Processing," as the legal authority for its actions. I agree that BAM 115 is the correct legal authority here.

BAM 115 contains four pages of instructions for interviews, including telephone and in-person interviews. Here the pertinent section I find is as follows:

INTERVIEWS

Scheduling Interviews

All Programs

Schedule interviews in Bridges promptly to meet the standard of promptness.

For **FAP only** schedule the interview as a telephone appointment **unless** specific policy directs otherwise. The interview must be held by the **20th** day after the application date to allow the client at least 10 days to provide verifications by the 30th day. BAM 115, p. 15 of 26 (bold print in original).

In applying this policy to the facts of this case, I have reviewed the evidence and testimony in its entirety. I find that DHS failed to conduct Claimant's interview within twenty days as required by its policies and procedures. The record indicates that Claimant applied on July 8, 2010, and, according to BAM 115, the interview should have been held on or before July 28, 2010. However, Claimant's interview was scheduled to occur on August 6, 2010, twenty-nine days after the day Claimant applied.

I find that DHS failed to follow its own procedures in this case and DHS is therefore REVERSED. IT IS ORDERED that Claimant's July 8, 2010, application interview shall be rescheduled so as to give Claimant the opportunity to establish his eligibility for FAP benefits as of July 8, 2010. If Claimant establishes eligibility as of July 8, 2010, Claimant shall be afforded all FAP benefits to which he is entitled 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, REVERSES the denial of FAP benefits in this case. IT IS ORDERED that DHS shall reschedule Claimant's July 8, 2010, application interview and, if he is eligible, DHS shall provide appropriate benefits as of that date in accordance with DHS policies and procedures.



Jan Leventer
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 8, 2010

Date Mailed: December 9, 2010

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:

