

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

IN THE MATTER OF:



Reg. No.: 2011-46944
Issue Nos.: 2000, 3008
Case No.: [REDACTED]
Hearing Date: September 1, 2011
DHS County: Oakland (63-02)

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 September 1, 2011, in Detroit, MI. Claimant appeared and testified. [REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUES

1. Whether Claimant cooperated with DHS as a requirement of receiving Food Assistance Program (FAP) benefits?
2. Whether Claimant's request to dismiss his hearing request with regard to the removal of his daughter from the Medical Assistance (MA or Medicaid) program and with regard to his MA Medicare Savings Program benefits shall be granted?

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 FAP benefits of \$650 per month to Claimant.
2. On June 1, 2011, DHS reduced Claimant's FAP from \$650 to \$417.
3. On or about June 27, 2011, Claimant's daughter became employed.
4. Effective July 1, 2011, DHS terminated Claimant FAP benefits.

5. On July 20 and 28, 2011, Claimant filed a series of three Requests for a Hearing with DHS.
6. On July 28, 2011, DHS issued a Notice of Case Action approving ongoing Medicare Savings Program benefits for Claimant effective September 1, 2011.
7. On August 4, 2011, DHS issued a Notice of Case Action closing Claimant's daughter's MA benefits.
8. At the September 1, 2011, Administrative Hearing in this matter, Claimant requested that the Administrative Law Judge dismiss his hearing requests with regard to his daughter's MA coverage and his Medicare Savings Program benefits.

CONCLUSIONS OF LAW

FAP was established by the United States Food Stamp Act of 1977 and is implemented by Federal regulations contained in Title 7 of the Code of Federal Regulations. DHS administers FAP pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3001-3015. 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 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.

Applying BAM 105 to this case, there is no dispute that Claimant has cooperated fully with DHS and is entitled to every legal protection provided by BAM 105. On the other hand, DHS has submitted no evidence in the record to explain why Claimant's FAP was reduced in June and terminated in July. Without such proof, it is possible that DHS erred in this case and a recalculation must be made to remedy this situation. This reprocessing will ensure that DHS properly determines Claimant's benefits and eligibility, and that Claimant's rights shall be protected.

Next, with regard to Claimant's MA concerns, the DHS testimony and evidence at the hearing support the conclusion that these issues have been resolved. Claimant, understanding this, requested the Administrative Law Judge dismiss these claims from the administrative hearing process. Claimant's request is consistent with the evidence, and it shall be granted.

In conclusion, based on the findings of fact and conclusions of law above, it is found and concluded that DHS erred in that it failed to protect Claimant'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 he is entitled as of June 1, 2011.

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. Reinstatement Claimant's FAP benefits;
2. Initiate procedures to recalculate Claimant's FAP for June 2011 based on the group's actual income;
3. Initiate procedures to provide Claimant with all supplemental retroactive benefits to which he is entitled effective June 1, 2011.

FURTHERMORE, based on all of the evidence and testimony presented, it is found that it is appropriate that Claimant's request that his MA disputes be dismissed shall be granted. IT IS HEREBY ORDERED that Claimant's MA claims are DISMISSED.

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: September 7, 2011

Date Mailed: September 8, 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/pf

cc:

