

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.: 2011-9354
Issue No.: 2006/3012/5000
Case No.: [REDACTED]
Hearing Date: January 13, 2011
Wayne County DHS (17)

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 January 13, 2011. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, appeared and testified.

ISSUES

1. Whether DHS properly halted Claimant's Food Assistance Program (FAP) benefits in 11/2010 due to Claimant's alleged failure to verify a shelter expense.
2. Whether DHS properly denied Claimant's application for Medical Assistance (MA) and State Disability Assistance (SDA) benefits due to Claimant's alleged failure to verify pursuit of Social Security Administration (SSA) benefits.
3. Whether Claimant is entitled to a remedy for State Emergency Relief (SER) concerning shelter when Claimant never applied for SER.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On 9/20/10, Claimant applied for SDA and MA benefits.
2. DHS issued FAP benefits to Claimant for 9/2010 and 10/2010.

3. DHS suspended Claimant's FAP benefits effective 11/2010 due to a failure by Claimant to verify his shelter expense.
4. On 9/28/10, DHS mailed Claimant a Medical Determination Verification Checklist (Exhibit 1) requesting various documents including a DHS-0049 Medical Examination Report.
5. On the checklist dated 9/28/10, DHS added the following under the section titled "Additional documentation needed to support disability...: Proof you have applied for social security benefits."
6. The due date listed on the checklist for Claimant to return documents was 10/8/10.
7. Claimant failed to submit a verification that he applied for benefits through the Social Security Administration (SSA) social security by the due date.
8. Claimant also failed to return a DHS-0049 by the 10/8/10 due date.
9. On 10/22/10, DHS denied Claimant's SDA and MA benefits due to Claimant's failure to return the DHS-0049 and verification that he applied for SSA benefits.
10. On 11/30/10, Claimant requested a hearing disputing the denial of SDA and MA benefits, the suspension of his FAP benefits and an issue concerning "shelter".

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). The Department of Human Services (formerly known as the Family Independence Agency) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

A request for program benefits begins with the filing of a DHS-1171 or other acceptable form. BAM 110 at 1. Before processing an application for FAP benefits, DHS may require a client to verify information within their application. Verification is usually required at application. BAM 130 at 1. DHS must give clients at least ten days to submit verifications. *Id.* After the date passes for submission of verifications, DHS may send a

negative action notice if the time period given has elapsed and the client has not made a reasonable effort to provide the information. BAM 130 at 5.

In the present case, DHS initially approved Claimant to receive \$200/month in FAP benefits. On an unspecified date, DHS stopped the issuance of FAP benefits due to Claimant's alleged failure to verify his shelter obligation. Concerning FAP benefits, when an expense is unverified, DHS specialists are directed to not budget expenses that require verification until the verification is provided. BEM 554 at 2. DHS is to determine eligibility and the benefit level without an expense requiring verification if it cannot be verified. *Id.* There is no basis within DHS regulations for suspending FAP benefits based on Claimant's alleged failure to verify his shelter expenses. If Claimant failed to verify his shelter expense, DHS should have continued to issue FAP benefits while giving Claimant no credit for paying a shelter obligation. It is found that DHS erred by suspending Claimant's FAP expenses due to an alleged failure by Claimant to verify his shelter obligation.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, et seq., and MAC R 400.3151-400.3180. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

DHS denied Claimant's request for SDA and MA benefits based on Claimant's failure to timely submit two documents, a DHS-0049 Medical Examination Report and verification of pursuit of SSA benefits. DHS contends that a failure by Claimant to submit either document would have resulted in an appropriate denial of SDA and MA benefits. The undersigned will first consider the denial based on Claimant's failure to verify SSA pursuit of benefits.

Clients must apply for benefits for which they may be eligible. BEM 270 at 1. This includes taking action to make the entire benefit amount available to the group. *Id.* Any action by the client or other group members to restrict the amount of the benefit made available to the group causes ineligibility. *Id.*

For MA and SDA benefits, Retirement, Survivors, Disability insurance (RSDI) and Supplemental Security Income (SSI) are both potential benefits which must be pursued. *Id.* RSDI and SSI benefits are offered by SSA. A client's statement at application, redetermination or change that he/she has applied for or is not eligible for the potential benefit is to be accepted by DHS unless the statement is unclear, inconsistent or in conflict with other information. *Id.* at 5.

RSDI is a potential benefit for all of the following persons:

- A person who is blind.
- A person who is retired and at least age 62.
- A person who claims illness or injury prevents him from working for at least 12 months.
- A person whose spouse is retired, disabled or dead.
- A child whose parent is retired, disabled or dead. *Id.*

SSI benefits are paid to persons who are aged (65 or older), blind or disabled. The following clients must be referred to SSA to apply for SSI:

- Persons age 65 or older.
- Person receiving SDA and disability-related MA.
- Adults in a FIP group who are blind or who claim illness or injury prevents them from working for at least 12 months. However, do not deny eligibility to an FIP Applicant or Recipient unless MRT has determined that they are potentially eligible for SSI.
- Children who are blind or disabled. A child is considered disabled for SSI purposes if they meet all of the following: he has a physical or mental condition(s) that can be medically proven, the condition(s) results in marked and severe functional limitations, the condition has lasted or is expected to last at least 12 months or end in death and the child is not working at a job considered "substantial work" by SSA. *Id.*

In the present case, DHS requested proof of Claimant's pursuit of SSA benefits by adding a statement to a Medical Determination Verification Checklist (DHS-3503-MRT) requesting other medical documents. The DHS-3503-MRT (Exhibit 1) is a pre-formatted document for DHS. It lists specific medical documents and allows DHS to check boxes next to each form when a document is needed. None of the listed forms on the DHS-

3503-MRT concern verifying pursuit of SSA benefits. The mere absence of any form on the checklist relating to pursuit of SSA benefits is some evidence that DHS may have improperly used the DHS-3503-MRT to request verification of SSA benefit pursuit. More troubling is the issue of whether Claimant had notice of the request. It would be reasonable for a client to expect that if DHS requested a document, that it would be listed and have a checked box next to it on the checklist. In the present case, the request for proof of application of SSA benefits is requested separately under a section titled, "Additional documentation needed to support disability." The undersigned can easily understand how a client could overlook this request.

It is also debatable whether an applicant for SDA and MA benefits is required to verify pursuit of SSA benefits. Pursuit of SSI benefits is only required when a client receives SDA or MA based on disability. Claimant was an applicant for SDA and MA, not a recipient. Thus, there was no apparent requirement for Claimant to pursue SSI benefits.

It could be reasonably argued that Claimant was required to pursue RSDI benefits because by claiming a disability, Claimant claimed to have an illness or injury that was expected to last 12 months. The undersigned is not inclined to find that a client claiming to have a disability realizes that the disability determination will be based partly on whether Claimant has an illness or injury that will prevent employment for a 12 month period. In other words, in a client's mind, a client can claim to be disabled but not realize that equates to claiming an injury expected to last 12 months.

Also, BEM 270 states that "refusal" to pursue potential benefits results in ineligibility. DHS regulations do not specifically define "refusal". DHS essentially contended that a client's failure to submit verification in response to a Verification Checklist constitutes a "refusal" to pursue SSA benefits. Generally, "refusal" denotes something active rather than inactive. A client statement literally refusing to pursue SSA benefits would certainly qualify as a "refusal". Consistent or chronic inaction by a client to pursue SSA benefits may constitute a refusal. However, the failure to respond within 10 days to a checklist request is not found to be enough inaction to amount to a refusal. Based on the totality of the aforementioned reasons, it is found that Claimant did not refuse to pursue SSA and RSDI benefits.

The second issue presented by DHS was Claimant's failure to return a DHS-0049 Medical Examination Report. This document was specifically listed on the DHS-3503-MRT so there would be no issue of lack of notice. There is also no doubt that this is a required form for SDA and MA benefits. Claimant attempted to contend that he did not receive the checklist however Claimant's testimony was not credible concerning this issue. When testifying concerning whether he had noticed of the request to prove he applied for SSA benefits, Claimant testified that he never saw the request on the checklist. At the time, Claimant made no mention of not receiving the checklist.

Claimant later testified that he did not submit a DHS-0049 because he never received the checklist. This testimony tends to contradict Claimant's earlier testimony which essentially conceded receipt of the checklist. It is found that Claimant received the DHS-3503-MRT.

For MA benefits, client are to be given 10 calendar days (or other time limit specified in policy) to provide the requested verification. BAM 130 at 5. If the client cannot provide the verification despite a reasonable effort, extend the time limit up to three times. *Id.*

Claimant also testified that he left a voicemail for his DHS specialist concerning his inability to obtain a completed DHS-0049 from his physician and that he requested additional time to return the checklist. DHS honestly responded that it was possible that Claimant could have left such a voicemail. Though Claimant's testimony was unrebutted, the undersigned could reasonably find that Claimant's testimony concerning the request for extension was contaminated based on Claimant's lack of credibility on whether he received the request. In such a case, DHS would have properly denied Claimant's request for SDA and MA benefits based on Claimant's failure to timely verify a DHS-0049. The undersigned will give Claimant the benefit of the doubt and find Claimant's testimony sufficiently credible that he requested an extension from DHS. Accordingly, it is found that DHS should have extended Claimant's time to return the DHS-0049 and that DHS improperly denied Claimant's application for SDA and MA benefits.

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. Department of Human Services (formerly known as the Family Independence Agency) policies are found in the Emergency Relief Manual (ERM).

SER is a program which offers assistance for various client emergencies. Clients may seek assistance through SER for any of the following: heat or gas bills, water bills, electricity bills, home repairs, rent or mortgage arrearages, relocation expenses including rent and security deposit, food, burials or migrant hospitalization.

Any person has the right to apply for SER. ERM 103 at 1. The application for SER is the DHS-1514, State Emergency Relief Application. *Id.* All SER applicants must complete this form unless they apply online through MIBridges for an energy-related service. *Id.*

Concerning Claimant's hearing request for "shelter", Claimant stated that his house is in foreclosure status and that he wanted assistance with stopping the foreclosure. Claimant never completed an SER application but stated on his Assistance Application (DHS-1171) that he wanted assistance with SER. By requesting assistance for the program, Claimant certainly should have been given the opportunity to apply for SER.

It is reasonably possible that DHS did not bother presenting Claimant with an SER application knowing that Claimant would not be eligible for SER assistance for mortgage payments because Claimant's income is currently \$0/month. DHS is only to approve SER for home ownership if the ongoing cost of maintaining the home is affordable to the SER group. ERM 304 at 3.

Claimant is unquestionably entitled to apply for SER; however, the undersigned finds no point in ordering DHS to backdate a yet to be submitted application which would have been denied based on a lack of affordability. Thus, it is found that DHS did not improperly deny Claimant a chance to apply for SER. Claimant may apply for SER at any time in the future by completing a DHS-1514.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly took no action concerning SER as Claimant never applied for SER. Claimant's hearing request is PARTIALLY AFFIRMED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly suspended Claimant's FAP benefits. It is ordered that DHS activate Claimant's FAP benefits beginning with benefit month 11/2010.

It is also found that DHS improperly denied Claimant's application dated 9/20/10 for MA and SDA benefits. It is ordered that DHS reinstate Claimant's application for SDA and MA benefits and to provide Claimant an extension concerning submission of a DHS-0049 Medical Examination Report and to allow Claimant time to apply for SSA benefits. The actions taken by DHS are PARTIALLY REVERSED.



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

Date Signed: 2/4/2011

Date Mailed: 2/4/2011

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

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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.

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