

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.: 2011-19358
Issue Nos.: 1025, 2014, 3000
Case No.: [REDACTED]
Hearing Date: March 14, 2011
DHS County: Oakland (63-04)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was held on March 14, 2011. Claimant appeared and testified, and her husband, [REDACTED], appeared and testified as a witness for her. [REDACTED], and [REDACTED] appeared and testified for the Department of Human Services (DHS).

ISSUES

1. Whether Claimant is eligible for Food Assistance Program (FAP) benefits in accordance with DHS policy and procedure?
2. Whether Claimant is eligible for Medical Assistance (MA or Medicaid) benefits pursuant to DHS policy and procedure?

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 October 15, 2010, Claimant applied for FAP and MA benefits with DHS.
2. On October 29, 2010, DHS denied Claimant's application for FAP and MA benefits.
3. On November 16, 2010, Claimant filed a notice of hearing request with DHS.

4. At the Administrative Hearing held on March 14, 2011, Claimant withdrew her hearing request regarding the FAP program.
5. Also at the hearing, Claimant and [REDACTED] both testified that the DHS income calculations made to determine Claimant's eligibility for MA were correct, and the calculations were not in dispute.

CONCLUSIONS OF LAW

FIP was established by the U.S. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 United States Code 601 *et seq.* DHS administers the FIP program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules (MACR) 400.3101-400.3131. 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.

FAP was established by the U.S. Food Stamp Act of 1977 and is implemented by Federal regulations contained in Title 7 of the Code of Federal Regulations. DHS administers the FAP program pursuant to MCL 400.10 *et seq.* and MACR 400.3001-400.3015. Department policies are found in BAM, BEM and RFT. *Id.*

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 administrative manuals are the policies and procedures DHS officially created for its own use. While the DHS manuals are not laws created by the U.S. Congress or the Michigan Legislature, they constitute 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 is, I will examine whether it was in fact followed in this case.

I will address the FAP issue first. As Claimant no longer wishes to dispute DHS' action on this issue, I shall dismiss this issue from this case and will not decide this issue.

Next, I turn to the MA issues, and there are two of them. There is no dispute between the parties that DHS determined Claimant's eligibility using the correct income amounts. Claimant and her husband both testified that the purpose of the hearing request was not to challenge the income calculations but instead to bring to DHS' attention that the

denial left Claimant's family in a precarious position, with a major medical debt to repay and no visible means to repay it.

As the parties agree that Claimant is ineligible by virtue of excess income and no error has been brought to my attention in this matter, I can only point out that BEM 500, "Income Overview," does require that income is the basis for eligibility for MA. As long as Claimant's income has been fairly and accurately considered for eligibility, I can only find that DHS has acted correctly in accordance with its policy and procedures. I find and conclude that this is what occurred in this case.

In this case, there is another issue raised by Claimant, and that is the issue of noncooperation with child support. This issue is stated as a reason for the denial of MA benefits in the Notice of Case Action. At the hearing, Claimant testified she was not uncooperative with the DHS Office of Child Support (OCS) and challenged this particular reason for the denial of benefits as incorrect.

I look to the DHS manuals for the operating policies and procedures to be followed in any given situation, and I agree with DHS that the applicable policy in this case is BEM 255, "Child Support." In Item 255, the Department Philosophy is stated at the outset of the section:

CHILD SUPPORT

DEPARTMENT PHILOSOPHY

Families are strengthened when children's needs are met. Parents have a responsibility to meet their children's needs by providing support and/or cooperating with the department including the Office of Child Support (OCS), the Friend of the Court (FOC) and the prosecuting attorney to establish paternity and/or obtain support from an absent parent. BEM 255, p. 1.

I think it is very important to note that this statement is the Department Philosophy and not merely a policy; in fact, Department Policy appears immediately after it. I note that very few Items in the DHS manuals have Philosophy statements included in them. I think the significance of having a Department Philosophy means that strengthening families is a major goal of DHS and that DHS must use, perhaps, more than reasonable care, even a high degree of care, in its efforts to strengthen families in the State of Michigan.

In this light I will continue my reading of BEM 255 to determine the rights and responsibilities of the parties in this matter. BEM 255 is sixteen pages long and contains detailed instructions regarding the child support issue. I divide the relevant paragraphs of BEM 255 into two categories, the Claimant's responsibilities and DHS'

responsibilities. Within DHS, there are multiple responsibilities, some within OCS, some at the Local Office (LO) level, and some responsibilities involving coordination between OCS and the LO.

First, with regard to Claimant's responsibilities, BEM 255 sets these forth on pages 1 and 8, as follows:

DEPARTMENT POLICY

FIP, CDC [CHILD DEVELOPMENT AND CARE] Income Eligible, MA and FAP

Clients must comply with all requests for action or information needed to establish paternity and/or obtain child support on behalf of children for whom they receive assistance, unless a claim of good cause for not cooperating has been granted or is pending.

Absent parents are required to support their children. Support includes **all** of the following:

- Child support.
- Medical support.
- Payment for medical care from any third party.

Failure to cooperate without good cause results in disqualification. Disqualification includes member removal, as well as denial or closure of program benefits, depending on the type of assistance (TOA). See Support Disqualification in this item.

BEM 255, p. 1 (bold print in original; note and exception omitted).

...

COOPERATION

FIP, CDC Income Eligible, MA and FAP

Cooperation is a condition of eligibility. The following individuals who receive assistance for themselves or on behalf of a child are required to cooperate in establishing paternity and obtaining support, unless good cause has been granted or is pending:

- Grantee (Head of Household) and spouse.
- Specified relative/individual acting as a parent and spouse.
- Parent of the child for whom paternity and/or support action is required.

Cooperation is required in all phases of the process to establish paternity and obtain support. It includes **all** of the following:

- Contacting the SS when requested.
- Providing all known information about the absent parent.
- Appearing at the office of the prosecuting attorney when requested.
- Taking any actions needed to establish paternity and obtain child support (including but not limited to testifying at hearings or obtaining blood tests).

Id., p. 8 (bold print in original).

I have reviewed all of the evidence and testimony in this case. Based on the record before me, I find and conclude that Claimant cooperated to the fullest and did not fail in any respect with regard to her responsibility to cooperate with DHS. I find Claimant's testimony to be credible and unrebutted in this case and I accept it. I find and conclude that Claimant has met the legal requirements imposed on her by the BEM 255 child support policy and procedure of DHS.

Looking next at the child support policy and procedure with regard to DHS' own responsibilities, I find that BEM 255 contains four paragraphs pertinent to this case. I present them here.

The first responsibility lies with OCS, and it consists of three parts.

ROLE OF THE SUPPORT SPECIALIST

FIP, CDC Income Eligible, MA AND FAP

Support Specialists (SS) work for the OCS within DHS as the liaison between DHS and local officials by:

- Accepting referrals/applications for child support services on behalf of public assistance recipients, as well as from the general public.
- Obtaining absent parent information from clients.
- Reviewing and offering comment on good cause claims.
- Notifying you of clients' cooperation and/or non-cooperation.
- Referring appropriate cases to the local prosecutor or the FOC.

Id., p. 5 (bold print in original; note omitted).

...

Support Specialist Determines Cooperation

FIP, CDC Income Eligible, MA and FAP

The SS determines cooperation for required support actions. They will notify you when a client fails to cooperate. See Support Disqualification.

Cooperation is assumed unless and until you are notified of non-cooperation by OCS. The non-cooperation continues until you are notified of cooperation by OCS or cooperation is no longer an eligibility factor.

See Removing a Support Disqualification later in this item.

Id., p. 9 (exception omitted).

...

SUPPORT DISQUALIFICATION

FIP, CDC Income Eligible, MA and FAP

...

Do **not** impose the disqualification if any of the following occur on or before the timely hearing request date:

- You are notified by OCS that the individual has cooperated.

Id., p. 10 (bold print in original).

Having reviewed this first group of DHS requirements, I find and conclude that DHS erred with regard to its child support responsibilities when OCS failed to note that Claimant gave full information from the beginning. I find nothing in the record to prove that OCS ever requested further information from Claimant, and there is nothing in the record to prove that such information was not provided. I find and conclude that DHS erred when OCS decided Claimant was noncooperative, as I can find no evidence that Claimant failed to cooperate.


In conclusion, based on the above findings of fact and conclusions of law, I rule as follows in this case:

1. Claimant's request for a hearing on the issue of FAP benefits is DISMISSED.
2. DHS' denial of MA benefits to Claimant is AFFIRMED, as Claimant's group is over the income limit to receive these benefits.
3. DHS is REVERSED in its finding that Claimant was uncooperative with DHS' paternity and child support requirements.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that DHS is PARTIALLY AFFIRMED AND PARTIALLY REVERSED. IT IS ORDERED that:

1. Claimant's request for a hearing regarding FAP benefits is DISMISSED based on her withdrawal of this issue.
2. DHS is AFFIRMED in its denial of MA benefits to Claimant based on her income level.
3. DHS' is REVERSED with regard to its finding that Claimant is noncooperative with the Office of Child Support. DHS shall make appropriate corrections in Claimant's case records to reflect her correct status as to cooperation with OCS in accordance with DHS policy and procedure.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: March 21, 2011

Date Mailed: March 24, 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.

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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:

