

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-24302
Issue No.: 1014
Case No.: [REDACTED]
Hearing Date: April 27, 2011
DHS County: Wayne (82-76)

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 April 27, 2011. Claimant appeared and testified. [REDACTED]

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

ISSUE

Whether Claimant is entitled to Direct Support Services (DSS) as part of her participation in the Family Independence Program (FIP)?

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 March 24, 2010, Claimant applied for DSS benefits to assist in buying a car.
2. On April 1, 2010, DHS approved \$800 for Claimant to buy a car.
3. On March 10, 2011, Claimant filed a Request for Hearing with DHS.
4. On March 17, 2011, DHS submitted a Hearing Summary in this matter, in which it failed to state why it believed the request should not be heard.
5. Also in the March 17, 2011, Hearing Summary, DHS failed to state that the request was received more than ninety days after the Notice of Case Action.

6. DHS failed to attach the Notice of Case Action to the Hearing Summary.
7. At the Administrative Hearing on April 27, 2011, Claimant withdrew the second issue in her Hearing Request, Food Assistance Program benefits, from consideration by the Administrative Law Judge.

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 FIP 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.

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.

Under BAM Item 600, "Hearings," clients have the right to contest any DHS decision affecting eligibility or benefit levels whenever they believe the decision is illegal. DHS provides an Administrative Hearing to review the decision and determine if it is appropriate. DHS policy includes procedures to meet the minimal requirements for a fair hearing. Efforts to clarify and resolve the client's concerns start when DHS receives a hearing request and continue through the day of the hearing. BAM 600.

BAM 600, however, provides only ninety days for a dissatisfied customer to file a hearing request concerning a DHS action. BAM 600, p. 4. As DHS issued a Notice of Case Action on April 1, 2010, I find and conclude that Claimant had until June 30, 2010, to meet the ninety-day deadline for filing a hearing request. However, the Hearing Request is dated March 10, 2011, over eight months after the ninety-day deadline and over eleven months after the Notice of Case Action. I find nothing in the record to explain or justify Claimant's delay in filing her hearing request. I, therefore, determine and conclude that the request is untimely.

However, as DHS failed to raise this issue in the required manner, I can only assume that DHS has waived its right to do so and does not object to Claimant's Hearing Request on that basis. BEM 600 requires DHS to do three things to preserve this issue. First, DHS must state in the Hearing Summary its reasons why the Request should not

be heard in an Administrative Hearing. Second, DHS must state in the Hearing Summary that the Hearing Request is in fact untimely. Third, DHS must attach a copy of the Notice of Case Action to the Hearing Summary.

I have reviewed all of the evidence in this case as a whole in reaching my decision. I find and conclude that the Hearing Summary does not state that Claimant's Request is untimely, nor does it state the reasons why the Administrative Law Judge should not hear the issue. I further find and conclude that DHS failed to attach a copy of the Notice of Case Action. Accordingly I find and conclude that DHS failed to take the opportunity to object to the untimeliness of Claimant's request and therefore DHS has waived the right to object on this basis.

Turning next to the provisions of BEM 232, "Direct Support Services," I find that there is nothing in this Item to prevent the payment of \$800 for a vehicle purchase merely because it may occur the following year. Stated another way, there is no deadline imposed on Claimant to make the purchase. Accordingly, I rule that DHS shall make \$800 DSS benefits available to Claimant at this time for the purchase of a vehicle. In this way, Claimant will be restored to the position to which she is entitled.

In conclusion, based on the findings of fact and conclusions of law above, I REVERSE DHS' failure to provide \$800 DSS vehicle expense benefits to Claimant, and IT IS ORDERED that such benefits shall be provided to her in accordance with DHS policies and procedures.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, determines and concludes that DHS is REVERSED in this case. IT IS ORDERED that DHS shall provide DSS vehicle expense benefits of \$800 to Claimant, in accordance with DHS policies and procedures.



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

Date Signed: May 4, 2011

2011-24302/JL

Date Mailed: May 5, 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:

