

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-27825
Issue Nos.: 2017, 3008
Case No.: [REDACTED]
Hearing Date: June 1, 2011
DHS County: Macomb (50-20)

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

ISSUES

1. Whether DHS reduced Claimant's Food Assistance Program (FAP) benefits in accordance with its policies and procedures?
2. Whether DHS terminated Claimant's Medical Assistance (MA or Medicaid) coverage of Medicare insurance premiums in accordance with its policies and procedures?

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 and MA benefits to Claimant.
2. On March 14, 2011, the U.S. Social Security Administration sent Claimant a letter informing him that the State of Michigan ceased paying his Medicare insurance premiums and as a result, he was no longer enrolled under the Medicare program.

3. On March 16, 2011, DHS sent Claimant a Notice of Case Action informing him that his FAP benefits would be reduced from \$168 to \$130 effective April 1, 2011.
4. On March 28, 2011, Claimant filed a Request for a Hearing with DHS.
5. At the Administrative Hearing on June 1, 2011, Claimant provided suitable verification of his shelter expenses to DHS.

CONCLUSIONS OF LAW

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 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.

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.*

BAM, BEM and RFT 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 consider first the action DHS took effective April 1, 2011, in reducing Claimant's FAP benefits. I find that BAM 105 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 of BAM 105, it 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).

I read this opening section of BAM 105 to mean 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, I read BAM 105 to mean that as long as the client is cooperating, DHS can and should be flexible in its requests for verification. On page 5, it 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.

Having identified the relevant legal authority for my decision, I now proceed to an analysis of how the law applies to the facts of the case at hand. DHS asserts that Claimant failed to provide DHS with verification of shelter expenses. In this case, DHS is not taking the position that Claimant refused to cooperate, either in its written Hearing Summary or at the April 25, 2011, Administrative Hearing.

I have reviewed all of the evidence and testimony in this case as a whole. I find and determine that Claimant did not refuse to cooperate with DHS. Claimant has received services from DHS since August 2009, and I infer from this that he has been cooperative in fulfilling all DHS requirements from August, 2009 to the present. Also, I find and determine that Claimant exhibited substantial cooperation when he submitted his shelter expense information to DHS at the hearing on June 1, 2011.

As Claimant has established to my satisfaction that he has cooperated with DHS, I next look to see if his rights have been protected by DHS. At the Administrative Hearing, DHS presented no evidence as to its request for shelter information. Based on the record before me, I do not know if DHS ever requested this information from Claimant, and if they did, I do not know when it was requested and whether he was given reasonable time, including extensions of time, to comply with the request.

Accordingly, my first conclusion in this case, based on the findings of fact and conclusions of law above, is that DHS failed to prove by clear and convincing evidence that Claimant refused to cooperate with the Department. Further, DHS failed to protect

client rights by failing to provide sufficient notice to him that shelter verification was required and giving him sufficient time, including extensions of time, in which to submit the verification. I REVERSE DHS' reduction of Claimant's FAP benefits.

Now I turn to the MA issue in this case. The March 14, 2011 letter from the Social Security Administration is in evidence in this case. It states as follows, and I quote:

Other Important Information
MR. JUSZCZYK'S MEDICARE BENEFITS CEASED DUE TO NON-PAYMENT OF PREMIUMS BY THE STATE OF MICHIGAN, SSA IS FOLLOWING UP ON THE STATUS OF HIS CASE TO REINSTATE HIS HEALTH BENEFITS IMMEDIATELY.

At the hearing, Claimant testified further that he was refused health care services by a provider who checked on Claimant's Medicare coverage and found that he was not a covered person. DHS was unable to verify that Claimant's Medicaid benefits were being paid, in particular, that DHS paid Claimant's Medicare Insurance premiums. DHS' payment records presented at the hearing are inconclusive in that they indicate Claimant is "Enrolled in Medicare Part A, B or D - any one or a combination."

Based on the record before me in this case, I find and conclude that DHS has failed to present clear and convincing evidence that it has Claimant's Medicare premiums as of March 14, 2011, the date of the Social Security letter. Accordingly I find and conclude that DHS erred and a remedy must be provided. DHS is REVERSED with regard to its denial of MA coverage of Claimant's Medicare insurance premiums.

In conclusion, based on the findings of fact and conclusions of law above, I decide and determine that DHS is REVERSED because of the errors in this case regarding Claimant's FAP and MA benefits. DHS is ORDERED to reprocess and recalculate Claimant's FAP benefits using his shelter verification and provide Claimant with all supplemental retroactive benefits to which he is entitled. Second, DHS is ORDERED to reopen and reprocess Claimant's MA coverage for Medicare premiums and provide him with the appropriate retroactive and continuing coverage to which he is entitled. All steps shall be taken in accordance with all DHS policies and procedures.

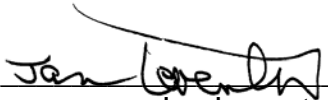
DECISION AND ORDER

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 reprocess and recalculate Claimant's FAP benefits and provide him with all supplemental retroactive benefits to which he is entitled. IT IS FURTHER ORDERED that DHS shall reopen and reprocess Claimant's MA coverage for Medicare premiums

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and provide him with the appropriate retroactive and continuing MA coverage to which he is entitled.

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: June 8, 2011

Date Mailed: June 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 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:

