

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.: 2011-3129
Issue No.: 5034/3000/6000
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: November 24, 2010
Wayne County DHS (76)

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 November 24, 2010. The claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Specialist, and [REDACTED], Manager, appeared and testified.

ISSUES

1. Whether Claimant is entitled to an administrative hearing based on a hearing request for CDC benefits when DHS had yet to make a determination on Claimant's CDC benefits application.
2. Whether Claimant is entitled to an administrative hearing based on a request to have her case transferred to a more conveniently located DHS office.
3. Whether DHS properly denied Claimant request for a vehicle repair.

FINDINGS OF FACT

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

1. Claimant applied for CDC benefits on 10/1/10.
2. DHS mailed Claimant a Verification Checklist on 10/9/10 requesting various documents from Claimant concerning her CDC benefit application.
3. DHS gave Claimant until 10/18/10 to return the requested documents.

4. On 10/15/10, Claimant requested a hearing concerning: CDC benefits, vehicle repair, FAP benefit reduction and a request to transfer her case to a DHS office located closer to her home.
5. As of 10/15/10, DHS had not made any determination on Claimant's CDC benefit application.
6. On 10/1/10, Claimant requested assistance from a DHS concerning a vehicle repair.
7. On 10/9/10, DHS denied Claimant's request for a vehicle repair due to Claimant's failure to submit three estimates of the repair from three different licensed mechanics.
8. Claimant concedes that DHS corrected her FAP benefit issuance and that the FAP benefit issue that led to her 10/15/10 hearing request has been resolved.

CONCLUSIONS OF LAW

The Child Development and Care program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (formerly known as the Family Independence Agency) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

BAM 600 lists the circumstances in which a hearing may be granted. The circumstances are: denial of an application and/or supplemental payments, reduction in the amount of program benefits or service, suspension or termination of program benefits or service, restrictions under which benefits or services are provided, delay of any action beyond standards of promptness, the current level of FAP benefits or a denial of expedited FAP benefit service. BAM 600 at 3.

One of the issues that led to Claimant requesting a hearing was a failure by DHS to grant a transfer of Claimant's file to a DHS office closer to Claimant's residence. A denial of Claimant's request for transfer is simply not an issue within any of the acceptable circumstances appropriate for an administrative hearing. The undersigned understands that Claimant's benefits may eventually be affected as a result of the lack of transfer. One example would be if DHS takes an adverse action on Claimant's

benefits due to Claimant's failure to attend an interview at the DHS office. If such an adverse action occurs, Claimant would be entitled to an administrative hearing concerning the affected benefits; at the time of Claimant's 10/15/10 hearing request, no such action had occurred. Accordingly, Claimant is not entitled to an administrative hearing based on a denied request to transfer her case.

Claimant also requested a hearing concerning an application dated 10/1/10 for CDC benefits. Claimant's hearing request was submitted 14 days after her application date and prior to any determination by DHS concerning CDC benefits. Claimant testified that she requested a hearing concerning CDC benefits because her specialist repeatedly fails to return her telephone calls. Again, a failure to return telephone calls is not, by itself, a circumstance which is appropriate for an administrative hearing. The undersigned can consider a DHS failure to return telephone calls if the failure was relevant to an adverse action on Claimant's benefits. For example, if Claimant called DHS and left a voicemail message asking questions about documents requested on a Verification Checklist and DHS ignored Claimant's message and denied Claimant's CDC benefit application, then Claimant's testimony concerning a failure by DHS to return the telephone call might be relevant. Again, in the present case, no such adverse action occurred prior to Claimant's hearing request so Claimant is not entitled to an administrative remedy.

Direct Support Services (DSS) are goods and services provided to help families achieve self-sufficiency. BEM 232 at 1. DSS includes Employment Support Services (ESS) and Family Support Services (FSS) that directly correlates to removing an employment-related barrier. *Id.* Vehicle purchases and repairs are DSS. *Id.* at 11.

Funds for direct support services for FIP, CDC, MA, and FAP Families, are allocated to local offices annually. *Id.* at 1. Local offices must prioritize the services provided to assure expenditures do not exceed their allocation. *Id.*

In the present case, Claimant completed a State Emergency Relief (SER) Application requesting assistance with a vehicle repair. It should be noted that vehicle repairs are covered by DSS policy, not SER policy. DHS testified that their particular office requires three vehicle repair estimates prior to approval... this testimony was not verified. DHS also testified that they believed that they had no funds available for DSS requests, though no proof was submitted of this. DHS also testified that Claimant may not have been aware of the requirement to submit three estimates but DHS had no obligation to inform Claimant of the requirement.

The first issue to be determined is whether Claimant has a right to an administrative hearing concerning a DHS decision on a DSS request. The DSS policy states there is no entitlement for DSS. *Id.* The decision to authorize DSS is within the discretion of the

DHS or the MWA. *Id.* This policy would tend to support that clients have no recourse on any DSS decision, even if DHS abused its discretion in denying the DSS request.

Nowhere within BEM 232, the DHS regulations concerning Direct Support Services, is it specifically prohibited to hold administrative hearings concerning DSS. Other sections of the DHS regulations which prohibit administrative hearings for certain issues have specific language and procedures for how to deal with such issues. Two issues where administrative hearings are specifically prohibited are appeals by Child Development and Care program providers found to be ineligible based on a criminal history (see BEM 704 at 6) and clients appealing a denial of a deferral from employment-related activities based on disability (see BEM 230A at 20). The absence of specific language within DHS regulations concerning hearings on DSS tends to support that clients may request hearings on the issue.

In the present case, DHS required Claimant to apply for DSS by completing an application for SER. Completion of the SER application is not required by State of Michigan DHS policies for DSS approval. The requirement was solely a local DHS office requirement. As previously stated, a denial of an application is a basis for an administrative hearing. BAM 600 at 3. As the local DHS office required an application for DSS, the undersigned is inclined to consider the DSS issue appropriate for administrative review as a denied application is a basis for an administrative hearing. As DHS has discretion in DSS matters, the undersigned is inclined to only reverse a DHS decision if the DHS discretion is abused.

DHS officially denied Claimant's vehicle repair request because Claimant failed to submit three written estimates of a vehicle repair. DHS testified that Claimant was never informed of the need to submit three estimates prior to the denial because there was no requirement to inform her. Denying a request for assistance based on a client's failure to submit something without informing the client could very easily be construed as an abuse of discretion.

The undersigned also doubts whether the local DHS office requires three estimates from licensed mechanics for a vehicle repair. Such a requirement would be so burdensome for a vehicle in need of repair that no client could reasonably be expected to fulfill the requirement. The evidence concerning Claimant's vehicle repair tended to support that DHS was abusing their discretion in denying Claimant's vehicle repair request.

It is unknown whether Claimant is otherwise eligible for DSS for a vehicle repair. Again, DHS has discretion in deciding such matters. It is found that DHS must provide notice to Claimant of the vehicle repair requirements prior to denying a request for vehicle repair based on a failure by Claimant to submit required documents. The below decision and order reflects this requirement.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the issue concerning Claimant's request for transfer is not a basis for administrative hearing. It is further found that Claimant failed to present any disputed issues involving CDC or FAP benefits that led the filing of her 10/15/10 hearing request. Concerning these issues, Claimant's hearing request is partially DISMISSED.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS abused their discretion in denying Claimant's vehicle repair request based on a failure to submit documents which were never requested from Claimant. It is ordered that DHS shall provide Claimant with written notice of all vehicle repair submission requirements. The actions taken by DHS are partially REVERSED.



Christian Gardocki
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 12/21/2010

Date Mailed: 12/21/2010

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.

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.

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