

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-32398
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: June 1, 2011
DHS County: Oakland (63-03)

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).

ISSUE

Whether DHS denied Food Assistance Program (FAP) benefits to Claimant 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. Claimant's family group consists of herself and her twin sister.
2. In December 2010, both Claimant and her sister worked at [REDACTED] and in December as well, both of them stopped working there.
3. On February 1, 2011, the date Claimant applied for FAP, DHS provided expedited FAP benefits to Claimant for a family group of two.
4. On February 1, 2011, DHS sent Claimant two employment verification forms for Claimant requesting the dates she and her sister last worked.

5. Claimant took the forms to [REDACTED] for processing, but the company failed to return the forms to DHS.
6. On March 1, 2011, DHS terminated Claimant's FAP benefits.
7. On April 8, 2011, Claimant filed a Request for a Hearing with 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.

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 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 my 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 loss of employment for herself and her sister. In this case, DHS is not taking the position that Claimant refused to cooperate, either in its written Hearing Summary or at the June 1, 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. As Claimant has fulfilled her duty to cooperate with the application process, I now consider whether DHS administered the application process in accordance with its policies and procedures.

I have reviewed the DHS manuals, and I find nothing therein that requires a customer to verify loss of employment to DHS. I find and determine that DHS imposed an arbitrary and capricious requirement on Claimant by requiring her to provide verification of employment she and her sister no longer had. Indeed, the DHS application form, DHS-1171, while it is not law and is not legal authority on this issue, asks only for changes of employment within the last thirty days. www.michigan.gov/dhs. In this case, DHS even exceeded the terms of its application form by requiring Claimant to produce verification of jobs lost more than thirty days previous to her application.

In conclusion, based on the findings of fact and conclusions of law above, I decide and determine that DHS failed to protect Claimant's right to benefits as required by BAM 105. DHS erred and a remedy shall be provided to Claimant. DHS is REVERSED. DHS is ORDERED to reopen and reprocess Claimant's FAP benefits and provide Claimant with all supplemental retroactive benefits to which she 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 reopen and reprocess Claimant's FAP benefits and provide her with all supplemental retroactive benefits to which she 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 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.

JL/pf

cc:

