

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-77036
Issue No.: 2006
Case No.: [REDACTED]
Hearing Date: December 6, 2012
County: Wayne (82-55)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on December 6, 2012, from Detroit, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Due to a failure to comply with the verification requirements, did the Department properly deny Claimant's application close Claimant's case reduce Claimant's benefits for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP)? | <input type="checkbox"/> State Disability Assistance (SDA)? |
| <input type="checkbox"/> Food Assistance Program (FAP)? | <input type="checkbox"/> Child Development and Care (CDC)? |
| <input checked="" type="checkbox"/> Medical Assistance (MA)? | |

FINDINGS OF FACT

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

1. Claimant applied for was receiving: FIP FAP MA SDA CDC.
2. Claimant was requested to submit requested verification by August 2, 2012.

3. On August 7, 2012, the Department
 denied Claimant's application.
 closed Claimant's case.
 reduced Claimant's benefits .
4. On August 7, 2012, the Department sent notice of the
 denial of Claimant's application.
 closure of Claimant's case.
 reduction of Claimant's benefits.
5. On August 28, 2012, Claimant filed a hearing request, protesting the
 denial of Claimant's application.
 closure of Claimant's case.
 reduction of Claimant's benefits.

CONCLUSIONS OF LAW

Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1997 AACS R 400.3101-3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) program] is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1997 AACS R 400.3001-3015

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The State Disability Assistance (SDA) program which provides financial assistance for disabled persons is established by 2004 PA 344. The Department (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 1998-2000 AACS R 400.3151-400.3180.

The Child Development and Care (CDC) 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 provides services to adults and children pursuant to MCL 400.14(1) and 1997 AACRS R 400.5001-5015.

The first question that must be asked with regard to a failure to return verifications is whether the Department had the right to require Claimant to return such verification. The Administrative Law Judge holds that the Department had no such right in the current case and was, therefore, incorrect when it denied Claimant's MA-P application for failure to return a DHS-49.

Claimant's application was denied for failing to return a DHS-49, which is a type of medical evidence. Per policy contained in BAM 815, this is **NOT** a verification as commonly understood under BAM 130. For a DHS-49 to be completed, a claimant must often schedule an exam and pay the doctor to complete the form. Furthermore, a DHS-49 is often unnecessary to a disability determination, especially if there is better, more complete evidence, such as exams, tests, and narrative reports from a treating source.

Therefore, securing this form must fall under step 12 of the medical evidence process, which deals with securing medical evidence, paying for medical evidence, and the scheduling and payment of medical exams. The Department erred in forcing Claimant to obtain this herself, when this form is of a type that claimants cannot be expected to secure themselves. The Department is clearly instructed to assist the claimant in securing the needed medical evidence.

Step 13 of the medical evidence process deals with verifications; however, as stated above, the DHS-49 is not a verification, but rather a narrative form of medical evidence that the Department must assist in obtaining.

Furthermore, BAM 815 does not state that an application may be denied for failing to return a piece of medical evidence. Per policy, a claimant is only required to return a DHS-1555 and DHS-49F. If there is a lack of medical evidence (and a DHS-49 is medical evidence), the case is to be denied by the Medical Review Team (MRT) for lack of medical evidence. At no point in the process can the Department foist the requirement for gathering medical evidence solely upon the claimant.

Finally, the Department argued that, because a medical verification was not returned, they were unable to make an eligibility determination per BAM 130, and rightfully denied the case. The Administrative Law Judge finds this argument to be without merit.

BAM 130 allows a case to be denied if the Department is unable to determine eligibility; contrary to popular belief, it does not allow the blanket denial of a case for a failure to return a verification. If the Department is able to determine eligibility, verifications are not needed and, therefore, the Department cannot deny for failing to return a

verification. Thus, BAM 130 only allows for a denial if the Department is unable to determine a claimant's eligibility status.

Therefore, logically speaking, according to the Department's own argument, the Department's local office made the determination that they were unable to determine eligibility because Claimant failed to return a DHS-49.

However, per BAM 815, the determination that there is insufficient evidence to make an eligibility determination with regards to medical disability lies solely in the hands of MRT. A general policy on verifications may not override the specific policy on obtaining medical evidence. BAM 130, a general catch-all, does not allow the Department to override specific medical evidence-gathering procedures.

Step 18 of the medical evidence process instructs MRT to make an eligibility determination, not the local Department office. The local office superseded the duties of MRT to make their own eligibility determination by determining that there was not enough medical evidence—such as a DHS-49—to make a disability determination. This is expressly contrary to law and policy, and the Department was incorrect to make this finding. If there is not enough medical evidence, MRT is to make the finding of no disability. The local office may not, in any circumstances, make a disability finding, as they did in the current case.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department

properly improperly

closed Claimant's case.

denied Claimant's application.

reduced Claimant's benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department

did act properly did not act properly.

Accordingly, the Department's decision is AFFIRMED REVERSED for the reasons stated on the record.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Re-initiate processing of the application in question.

2. Assist Claimant in securing any needed medical evidence, including a DHS-49 from her treating source, as provided for in BAM 815.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 4, 2013

Date Mailed: January 4, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS 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. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

RJC/pf

cc:

