

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201340838
Issue No.: 2006, 3008
Case No.: [REDACTED]
Hearing Date: May 14, 2013
County: Macomb (36)

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 May 14, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Claimant) and [REDACTED] (Paralegal). Participants on behalf of Department of Human Services (Department) included [REDACTED] (Assistance Payments Worker).

ISSUES

- i. Did the Department properly determine Claimant's eligibility for Medical Assistance (MA)?
- ii. Did the Department properly close Claimant's Food Assistance Program (FAP) case due to a failure to comply with the verification requirements?

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 MA and was active for FAP.
2. On March 18, 2013, the Department mailed Claimant the following: Self-Employment Income and Expense Statement (DHS-431), a Verification of Employment (DHS-431), and a Verification of Assets (DHS-20).
3. Claimant was required to submit requested verifications by March 28, 2013.

4. On April 2, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied Claimant's MA application and closed Claimant's FAP case for failure to submit verifications in a timely manner.
5. On April 12, 2013, Claimant filed a hearing request, protesting the MA denial and FAP closure.

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 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 AACRS 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.

Verification means documentation or other evidence to establish the accuracy of the client's verbal or written statements. BAM 130. Verification is usually required upon application or redetermination and for a reported change affecting eligibility or benefit level. BAM 130. Verifications are considered timely if received by the date they are due. BAM 130.

For FAP, the department must allow a client 10 calendar days (or other time limit specified in policy) to provide the requested verification. BAM 130. For MA and AMP, the client has 10 days to provide requested verifications (unless policy states otherwise). BAM 130. If the client cannot provide the verification despite a reasonable effort, the department worker may extend the time limit up to three times. BAM 130.

Should the client indicate a refusal to provide a verification or, conversely, if the time period given has elapsed and the client has not made a reasonable effort to provide it, the department may send the client a negative action notice. BAM 130. The department worker must tell the client what verification is required, how to obtain it, and the due date. BAM 130.

For FAP only, if the client contacts the department prior to the due date requesting an extension or assistance in obtaining verifications, the department must assist them with the verifications but not grant an extension. BAM 130. The department worker must explain to the client they will not be given an extension and their case will be denied once the VCL due date is passed. BAM 130. Also, the department worker shall explain

their eligibility will be determined based on their compliance date if they return required verifications. BAM 130. The department must re-register the application if the client complies within 60 days of the application date. See BAM 115 & BAM 130.

Generally speaking, the client is obligated to obtain required verification, but the department worker must assist if the client needs and requests help. BAM 130. If neither the client nor the department worker can obtain verification despite a reasonable effort, the department worker must use the best available information. BAM 130. If no evidence is available, the department worker should use his or her best judgment. BAM 130. Exception: Alien information, blindness, disability, incapacity, inability to declare one's residence and, for FIP only, pregnancy must be verified. BAM 130.

For all programs, the department must, before determining eligibility, give the client a reasonable opportunity to resolve any discrepancy between his statements and information from another source. BAM 130.

For FAP only, the department may not deny eligibility due to failure to cooperate with a verification request by a person outside the group. BAM 105, p 5. In applying this policy, a person is considered a group member if residing with the group and is disqualified.¹ BAM 105, p 5.

FAP group composition is established by determining all of the following: (1) who lives together; (2) the relationship(s) of the people who live together; (3) whether the people living together purchase and prepare food together or separately; and (4) whether the person(s) resides in an eligible living situation. BEM 212. The relationship(s) of the people who live together affects whether they must be included or excluded from the group. BEM 212. First, the Department must determine if they must be included in the group. BEM 212. If they are not mandatory group members, then the Department must determine if they purchase and prepare food together or separately. BEM 212.

Spouses who are legally married and live together must be in the same group. BEM 212. "Living with" means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. BEM 212. A person who is temporarily absent from the group is considered living with the group. BEM 212. A person's absence is temporary if all of the following are true: (1) his or her location is known; (2) he or she lived with the group before his absence (newborns are considered to have lived with the group); (3) there is a definite plan for his or her return; and (4) the absence has lasted or is expected to last 30 days or less. BEM 212. Exception: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home. BEM 212.

The Department may request a Front End Eligibility (FEE) investigation from the Office of Inspector General (OIG) to complete a home visit to verify if the parent is out of the home. BEM 233A. The Department worker shall not determine eligibility on the pending FIP EDG closure until the FEE agent completes an investigation. BEM 233A.

¹ See DISQUALIFIED PERSONS in BEM 212.

For FAP, a non-categorically eligible Senior/Disabled/Veteran (SDV) FAP group must have income below the net income limits. BEM 550. A non-categorically eligible, non-SDV FAP group must have income below the gross and net income limits. BEM 550.

Here, the issues concern the Department's decision to close Claimant's FAP case and to deny her MA application. According to the Department representative who attended the hearing, Claimant's FAP was closed and MA denied due to failure to return requested verifications. The primary point of contention concerns Claimant's spouse, [REDACTED]. The Department's verification requests sent to Claimant sought proof of her husband's ([REDACTED]) business income, expenses, receipts, accounting and business records from December 2012, January 2013 and February 2013. The Department also requested [REDACTED] employment and asset information. Claimant contends that she and her husband were separated at the time and were not living together. Claimant testified that she and her husband initially separated in September 2011 but later reconciled. Claimant then stated that she and her husband were "on and off" for a period of time, but at the time the verifications were mailed, she and her husband were permanently separated. Claimant and her husband are not divorced. According to Claimant, she did not have the verification information because she and her husband do not live together. Claimant disputes the Department's decision to add her husband to her case as they are separated and do not live together.

The Department, on the other hand, contends that an investigation by the Office of Inspector General (OIG) revealed that Claimant's spouse did, in fact, reside in the home with Claimant. Accordingly, the Department added Claimant's husband to the case. When Claimant returned the verifications regarding her husband's employment, assets and income with "none," the Department considered this response as a refusal to cooperate and a notice of case action denying MA and closing FAP was generated.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record, including the verification requests and Claimant's responses to those requests. The Department did not call any witnesses from the OIG to testify nor did the Department provide any investigations or reports in support of the proposition that Claimant and her spouse live together. The Department did not provide any evidence to counter Claimant's testimony that she and her husband were separated at the time and that he should not have been added to the group. As such, Claimant could not provide responses to the requested verifications.

Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that the Department did not properly process Claimant's MA application and did not properly close Claimant's FAP case due to failure to provide requested verifications.

This Administrative Law Judge finds that, based on the evidence presented, Claimant has made a reasonable effort to provide all requested verification(s) within the required time period.

DECISION AND ORDER

Based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge concludes that the Department did not properly deny Claimant's MA and did not properly close Claimant's FAP case due to failure to provide requested verifications.

Accordingly, the Department's MA and FAP decisions are **REVERSED**.

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

- Initiate a redetermination of Claimant's proper group composition.²
- If not already done, the Department may conduct a Front End Eligibility (F.E.E.) investigation to determine Claimant's proper group composition.
- Following the F.E.E. investigation, if necessary, the Department shall reprocess Claimant's MA application and redetermine Claimant's FAP eligibility back to the date of closure (this would include additional verifications if necessary).
- To the extent required by policy, the Department shall provide Claimant with retroactive and/or supplemental benefits.

IT IS SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: May 17, 2013

Date Mailed: May 20, 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

² This Administrative Law Judge does not find that Claimant and her spouse are not mandatory group members.

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.

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