

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201336204
Issue No: 3008
Case No: [REDACTED]
Hearing Date: April 23, 2013
County: Macomb County DHS #20

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 upon the claimant's request for a hearing received on February 19, 2013. After due notice, a telephone hearing was held on April 23, 2013. Claimant personally appeared and provided testimony. Participants on behalf of Department of Human Services (Department) included [REDACTED]erry (Assistance Payments Worker) and [REDACTED] (Assistance Payments Supervisor).

ISSUES

Whether the Department properly closed Claimant's case for Food Assistance Program (FAP) for failure to timely provide a redetermination packet?

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 was active for FAP benefits.
2. On January 2, 2013, the Department mailed Claimant a Notice of Missed Interview (DHS-254), which indicated that Claimant missed her telephone interview and that she must reschedule the interview before January 31, 2013.
3. On February 19, 2013, Claimant requested a hearing on a DHS-18 form because the Department closed her FAP case.

CONCLUSIONS OF LAW

The client has the right to request a hearing for any action, failure to act or undue delay by the department. BAM 105. The department provides an administrative hearing to review the decision and determine its appropriateness. BAM 600.

The regulations that govern the hearing and appeal process for applicants and recipients of public assistance in Michigan are contained in the Michigan Administrative Code (Mich Admin Code) Rules 400.901 through 400.951. An opportunity for a hearing shall be granted to a recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. Mich Admin Code 400.903(1).

The application forms and each written notice of case action inform clients of their right to a hearing. BAM 600. These include an explanation of how and where to file a hearing request, and the right to be assisted by and represented by anyone the client chooses. BAM 600. The client must receive a written notice of all case actions affecting eligibility or amount of benefits. When a case action is completed it must specify: (1) the action being taken by the department; (2) the reason(s) for the action; (3) the specific manual item(s) that cites the legal base for an action, or the regulation, or law itself. BAM 220.

The Michigan Administrative Hearing System (MAHS) may grant a hearing about any of the following: (1) denial of an application and/or supplemental payments; (2) reduction in the amount of program benefits or service; (3) suspension or termination of program benefits or service; (4) restrictions under which benefits or services are provided; (5) delay of any action beyond standards of promptness and (6) for FAP only, the current level of benefits or denial of expedited service. BAM 600.

When the Department conducts a prehearing conference, the Department must do all of the following: (1) determine why the client or authorized hearing representative is disputing the DHS action; (2) review any documentation the client or authorized hearing representative has to support his allegation; (3) explain the department's position and identify and discuss the differences; (4) determine whether the dispute can be resolved locally or requires MAHS to resolve; (5) mention to clients the availability of reimbursement for child care or transportation costs incurred in order to attend the hearing. BAM 600 p 13.

Policy also provides an administrative review process. The local office manager or designee must review all hearing requests which are **not** resolved by the first-line supervisor. The purpose of the review is to assure that local office staff has done the following: (1) applied DHS policies and procedures correctly; (2) explained DHS policies and procedures to the AHR or, if none, the client; (3) explored alternatives; (4) offered appropriate referrals to the client; and considered requesting a central office policy clarification or policy exception, if appropriate. BAM 600.

The local office manager or designee must evaluate the advisability of a hearing in relation to such factors as intent of policy, type of issue(s) raised, strength of the department's case, and administrative alternative. BAM 600. The local office manager is accountable for the decision that a hearing request **cannot** be resolved except through formal hearing. BAM 600. The administrative review does **not** replace the hearing process. BAM 600. The hearing must be held as scheduled **unless** the department deletes the negative action **or** the client or authorized hearing representative withdraws the hearing request. BAM 600.

For each hearing not resolved at a prehearing conference, the Department is required to complete a Hearing Summary (DHS-3050). BAM 600. In the hearing summary, all case identifiers and notations on case status must be complete; see RFF 3050. BAM 600. The DHS-3050 narrative must include **all** of the following: (1) clear statement of the case action, including all programs involved in the case action; (2) facts which led to the action; (3) policy which supported the action; (4) correct address of the AHR or, if none, the client; and (4) description of the documents the local office intends to offer as exhibits at the hearing. BAM 600.

Clients and AHRs have the right to review the case record and obtain copies of needed documents and materials relevant to the hearing. BAM 600. The Department must send a copy of the DHS-3050 and all documents and records to be used by the department at the hearing to the client **and** AHR. DHS-4772, Hearing Summary Letter, may be used for this purpose. BAM 600. However, there are 3 (three) exceptions.

Department workers who attend the hearings, are instructed to **always** include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. BEM 600.

During the hearing, the ALJ will follow the same rules used in circuit court to the extent these rules are practical in the case being heard. BAM 600. The ALJ must ensure that the record is complete, and may do the following: (1) take an active role in questioning witnesses and parties; (2) assist either side to be sure all the necessary information is presented on the record; (3) be more lenient than a circuit court judge in deciding what evidence may be presented; and (4) refuse to accept evidence that the ALJ believes is unduly repetitious, immaterial, irrelevant or incompetent. BAM 600.

The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600. The ALJ issues a final decision unless the ALJ believes that the applicable law does not support DHS policy or DHS policy is silent on the issue being considered. BAM 600. In that case, the ALJ recommends a decision and the policy hearing authority makes the final decision. BAM 600.

Claimant's request for a hearing in the instant matter clearly concerns the Food Assistance Program (FAP). 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 of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (BRM).

In the instant matter, the department has failed to clearly communicate to this Administrative Law Judge the precise nature of the department's actions. The department's Hearing Summary (DHS-3050) does not comply with the requirements set forth in BAM 600 as it does not contain a clear statement of the case action or facts which led to the action. BAM 600. Rather, the DHS-3050 indicates that the FAP closure was due to Claimant's failure to call for her redetermination interview. The only documents the Department provided in the records were the hearing summary and a Notice of Missed Interview.

Claimant testified that she timely mailed all redetermination papers to her Department caseworker (██████████) and that ██████████ misplaced them. Claimant also testified that she had a telephone interview with ██████████ on January 2, 2013. The Department, on the other hand, indicated that ██████████ left the office in January, 2013. The Department representatives who attended the hearing were unable to refute any of Claimant's statements.

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 finds Claimant's version of the events to be credible. In addition, the Department did not provide enough evidence in the record to prevail in this matter. The Department did not provide any exhibits in the record other than the notice of missed interview. This document alone is insufficient for the Department to prevail. Based on the lack of documentation and the inability of the department representatives to explain the department action, this Administrative Law Judge finds that the Department was unable to meet its burden of proof in this matter.

Accordingly, this Administrative Law Judge finds that, based on the material, substantial and competent evidence on the whole record, the department has failed to carry its burden of proof and did not provide information necessary to enable this ALJ to find that the department followed policy.

DECISION AND ORDER

The Administrative Law Judge finds that, based upon the above findings of fact and conclusions of law, the Department did not act properly when it closed Claimant's FAP case.

Therefore, the Department is **REVERSED**.

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

- Reopen Claimant's FAP case back to the date of closure.
- Redetermine Claimant's FAP eligibility.
- Provide Claimant with supplemental and/or retroactive FAP benefits to the extent required by policy.

IT IS SO ORDERED.

/s/_____

C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 26, 2013

Date Mailed: April 26, 2013

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.

CAP/aca

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