

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

IN THE MATTER OF:



Reg. No.: 201413949
Issue No.: 2002
Case No.: [REDACTED]
Hearing Date: February 6, 2014
County: Oakland (04)

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 February 6, 2014, from Detroit, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], ES, and [REDACTED], APS.

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 checked="" 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 required to submit requested verification by August 16, 2013.
3. On [REDACTED], the Department denied Claimant's application.

- closed Claimant's case.
- reduced Claimant's benefits .

4. On [REDACTED], the Department sent notice of the
- denial of Claimant's application.
 - closure of Claimant's case.
 - reduction of Claimant's benefits.
5. On [REDACTED], 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 Department testified that claimant's MA and SDA application was denied solely for failing to return a DHS-49 and other medical records; had the claimant's DHS-49 and other medical records been returned, claimant's MA and SDA application would have been sent to MRT for processing.

The first question that must be asked with regard to a failure to return verifications is whether the Department had the right to require the 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 and SDA application for failure to return a DHS-49 and other medical records.

Claimant application was denied for failing to return a DHS-49, as well as other forms in the DHS-49 series, which are a type of medical evidence; claimant was also denied for failing to return other medical records. Per policy contained in BAM 815, these are not verifications as commonly understood under BAM 130.

For a DHS-49 series form to be completed and medical records secured, claimants must often schedule an exam, and pay the doctor to complete the form or produce records. Furthermore, a DHS-49 series form 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. Likewise, medical records often require payment and can be very difficult to secure without outside assistance.

Therefore, securing a DHS-49 series form must fall under step 12 of the BAM 815 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 the claimant to obtain the DHS-49 series forms themselves, when these forms are of a type that a claimant cannot be expected to secure themselves; the same applies for requiring a claimant to secure medical records. 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 on. Likewise, medical records are not verifications, but rather medical evidence that the Department must assist in securing.

Furthermore, BAM 815 does not state that an application may be denied for failing to return a piece of medical evidence. Per policy found in BAM 815, a claimant is only specifically required to return a DHS-1555 and DHS 49-F (it should be noted that in the current case, the Department failed to supply claimant a DHS-1555, which would be a reason for reversal of this case in itself).

If there is a lack of medical evidence (and a DHS-49 series form and medical records are medical evidence), the case is to be denied by 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 by invoking BAM 130.

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 any verification. If the Department is able to determine eligibility, verifications are not needed, and therefore the Department cannot deny an application for failing to return an unneeded verification. Thus, BAM 130 only allows for an application denial if the Department is unable to determine claimant's eligibility status.

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

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 **specifically** instructs MRT to make a medical eligibility determination, not the local 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 series form and other medical records—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.

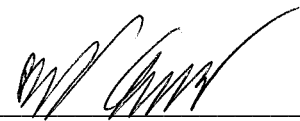
DECISION AND ORDER

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. Initiate reprocessing of claimant's June 24, 2013 MA and SDA application.



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

Date Signed: 2/28/2014

Date Mailed: 2/28/2014

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

2014-13949/RJC

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

RJC/hw

cc:

