

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant

Reg. No: 2009-30501
Issue No: 1033; 3025
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 18, 2009
Eaton County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; and MCL 400.37 upon claimant's request for a hearing. After due notice, a hearing was held on August 18, 2009. Claimant appeared and testified.

ISSUES

- (1) Did the Department of Human Services properly deny Claimant's application for Family Independence Program (FIP) benefits based on her resident alien status?
- (2) Did the Department of Human Services properly deny Claimant Food Assistance Program (FAP) benefits based on her resident alien status?

FINDINGS OF FACT

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

- (1) On May 4, 2009, Claimant and her daughter entered the United States from Ethiopia, as permanent residents. They were issued I551 residency cards.

(2) On July 1, 2009, Claimant applied for Family Independence Program (FIP) and Food Assistance Program (FAP) benefits.

(3) On July 10, 2009, Claimant was sent notice that she was not eligible for Family Independence Program (FIP) or Food Assistance Program (FAP) benefits due to her resident alien status. Claimant's daughter was issued Food Assistance Program (FAP) benefits due to a policy exception based on her age.

(4) On July 17, 2009, Claimant submitted a request for hearing.

CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The Department of Human Services (DHS or department) administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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 Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

BEM 225 CITIZENSHIP/ALIEN STATUS

DEPARTMENT POLICY

In this item:

- INA refers to the Immigration and Nationality Act.
- USCIS refers to the U.S. Citizenship and Immigration Services, formerly, the Bureau of Citizenship and Immigration or Immigration and Naturalization Service.

All Programs

Determine the alien status of each noncitizen requesting benefits at application, member addition, redetermination and when a change is reported.

FIP, SDA, and FAP

A person must be a U.S. citizen or have an acceptable alien status for the designated programs. See the "CITIZENSHIP/ALIEN STATUS" section below. Persons who do not meet this requirement, **or who refuse to indicate their status**, are disqualified.

Others living with a person disqualified by this requirement can qualify for program benefits. However, the disqualified person's assets and income might have to be considered based on the program(s) requested. See BEM 210, 212, and 550.

In this case, Department policy clearly states that a resident alien, with the status of Claimant and her daughter, who entered the US after 8/22/96, are not eligible for FIP or FAP benefits for the first five years they are in the US. Claimant's daughter falls into an age exception for FAP benefits. Claimant does not dispute her alien status. Claimant simply requests special consideration because of her difficult situation.

The claimant's grievance centers on dissatisfaction with the department's current policy.

The claimant's request is not within the scope of authority delegated to this Administrative Law

Judge pursuant to a written directive signed by the Department of Human Services Director,
which states:

Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations or overrule or make exceptions to the department policy set out in the program manuals.

Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940); *Auto-Owners Ins Co v Elchuk*, 103 Mich App 542, 303 NW2d 35 (1981); *Delke v Scheuren*, 185 Mich App 326, 460 NW2d 324 (1990), and *Turner v Ford Motor Company*, unpublished opinion per curium of the Court of Appeals issued March 20, 2001 (Docket No. 223082).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly denied Claimant Family Independence Program (FIP) and Food Assistance Program (FAP) benefits based on her resident alien status.

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 10, 2009

Date Mailed: September 16, 2009

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 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.

GFH 

cc:

