

THE STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2010-44327
Issue No. 3025/2024
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: September 13, 2010
Wayne County DHS (41)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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. After due notice, a telephone hearing was held on September 13, 2010. The claimant appeared and testified. [REDACTED], FIM and [REDACTED], ES appeared and testified on behalf of the department.

ISSUE

1. Was the claimant's FAP case properly closed for failure to establish residence?
2. Was the claimant's AMP case properly closed for failure to establish residence?

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 an active FAP and AMP benefits recipient in [REDACTED] County. At the time the claimant applied for benefits in May 2009 she did not provide Michigan identification but provided a [REDACTED] driver's license with her application.
- (2) The claimant was aware that she had 30 days within which to provide Michigan ID at the time of her an initial application in May 2009. The claimant testified that she did not obtain same because she was back and forth between Michigan and [REDACTED] and did not have the money to pay for state of Michigan identification.

- (3) Claimant was sent redetermination forms on March 16, 2010 with a due date of April 5, 2010. The redetermination forms do not specifically ask for state of Michigan identification. Exhibit 3
- (4) The Claimant returned a signed redetermination form dated March 24, 2010 together with a [REDACTED] driver's license and out-of-state telephone contact number. Exhibit 3
- (5) The claimant's FAP and AMP cases were closed on May 28, 2010 when the claimant indicated to her case worker that she did not know when she would return to Michigan and was out of the state indefinitely. The claimant was caring for two of her relatives who were ill. The Claimant was absent from Michigan from April 27, 2010 until her return July 10, 2010. Exhibit 2
- (6) The department closed the claimant's cases because she had a failed to establish residency in the state of Michigan. At the time of the May telephone conversation, the Claimant was told to provide Michigan identification immediately, and that she could not fax any information to the Department and that all information had to be original and handed in person. The Redetermination form in the hearing case file was signed by the Claimant and was an original. Exhibits 2 and 3
- (7) The claimant currently has applied for Michigan identification, approximately 1 week prior to the hearing, and does not as yet have identification in her possession for the state of Michigan.
- (8) Claimant's case worker spoke directly to the claimant sometime in May 2010 at which time the claimant acknowledged she was not in the state of Michigan and did not know when she would be returning.
- (9) The claimant requested a hearing on July 10, 2010 protesting the closure of her FAP and AMP cases which request was received by the Department on July 19, 2010.

CONCLUSIONS OF LAW

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 (formerly known as the Family Independence Agency) administers the FAP program pursuant to CML 400.10 *et seq.*,

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and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM) and Reference Tables (RFT).

The Adult Medical Program (AMP) is established by Title XXI of the Social Security Act; (1115)(a)(1) of the Social Security Act, and is administered by the Department of Human Services (DHS or department) pursuant to MCL 400.10, *et seq.* Department policies are contained in the Program Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BPRM).

In order to establish eligibility for FAP and AMP benefits a recipient must be a resident of the state of Michigan. During the time April 27, 2010 to July 10, 2010, the claimant was indefinitely out of the state of Michigan and living in [REDACTED] caring for ill relatives. Sometime during the month of May she had a conversation with her case worker and advised at that time that she would be out of the state indefinitely. As a result of that conversation the claimant's case worker closed her AMP and FAP cases noting that the Claimant had been out of the state for more than 30 days by Notice of Case Action on May 28, 2010.

The Claimant agreed and confirmed at the hearing that she told her case worker she would be out of the state of Michigan. The claimant did not possess at the time of the redetermination a valid Michigan identification. The redetermination forms did not specifically request this information be provided to the Department. The claimant's case worker requested that she provide said identification immediately at the time of their telephone conversation sometime in May, and during the period that the claimant was out of state. The fact that the claimant did not provide Michigan identification but only possessed a [REDACTED] drivers license, had an out of state phone number and was self admittedly indefinitely out of the state of Michigan caused the Department to close both her FAP and AMP cases.

BEM 220 provides the basis for requiring and requesting residency status of a recipient of benefits, it provides:

To be eligible for benefits the recipient must be a resident of Michigan.

With regard to AMP Assistance, a person is a resident if he:
Is not receiving assistance from another state; **and**
Is living in Michigan, except for a temporary absence,
and Intends to remain in the state permanently or indefinitely. BEM 220, page

To establish intent to remain in Michigan, the person's statement is to be accepted unless the statement is inconsistent with the known facts. BEM 220, page 6.

In this case the Department knew the claimant, who was very forthright about her whereabouts, was out of state indefinitely. Knowing this information the Department should have considered several factors before closing the Claimant's case. The first factor involves whether the Claimant's inability to determine her return necessarily precluded consideration of temporary absence. Clearly caring for ill individuals does not lend itself to predicting an exact return date. Further it does not appear that the Claimant was asked if she intended to remain in Michigan permanently or indefinitely on her return. This inquiry was a critical fact which should have been asked before closing the case. In retrospect, the question has been answered as the Claimant returned after a two month absence. Additionally to advise the claimant to provide identification immediately, while the Claimant is out of state, and to prohibit faxed copies of items requested is not reasonable under the circumstances.

Under these circumstances the Department prematurely and improperly closed the Claimant's AMP case because, while the Claimant advised the caseworker that she was out of the state indefinitely with no known return date this did not establish her intention to no longer permanently reside in Michigan. The Department must reopen the Claimant's AMP case and complete the redetermination process.

The requirements for FAP residency differs from AMP requirements and is less stringent.

BEM 220 provides:

CDC and FAP

A person is considered a resident while living in Michigan for any purpose **other than a vacation**, even if he has no intent to remain in the state permanently or indefinitely.

Claimant's can establish residency by driver's license, other id which establishes name and address, mortgage or rent receipt, utility bill or collateral contact with a person who knows the persons living arrangement. BEM 220, page 6.

Temporary Absence

A person who is temporarily absent from the group is considered living with the group.

A person's absence is temporary if:

His location is known; **and**

He lived with the group before his absence (newborns are considered to have lived with the group); and

There is a definite plan for his return; **and**

The absence has lasted or is expected to last 30 days or less. BEM 212, page 2.

Based upon these requirements the Claimant's FAP case should not have closed. While the claimant honestly admitted that she would be out of the state indefinitely, she did not have to demonstrate that she had intent to remain in Michigan or remain permanently or indefinitely. Her location was known, she was in [REDACTED] with a contact number. Here the Claimant said she did not know when she would return as she was caring for an ill relative; this did not mean she had no plan to return. Under these circumstances the department should have offered the Claimant an opportunity to establish residency by other means besides appearing in person and providing a Michigan driver's license or identification as set forth in BEM 220.

The Department also could have sought collateral contact with the Claimant's fiancé who was a group member, or asked for rent receipts or utility bills establishing residence. This being the case the Claimant's FAP case must be re opened and the Claimant should be given an opportunity to provide the verification sought by the department to establish Michigan residency during the period the case was closed by the Department.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's decision to place claimant's FAP and AMP cases into closure was incorrect and the Department's decision is REVERSED.

Accordingly, it is ORDERED:

- (1) The Department shall reopen and reinstate the Claimant's AMP and FAP cases retroactive to the date of closure and shall complete the redetermination process. The Department shall provide to the Claimant in

writing the information and documents it requires as part of the redetermination process and the Claimant shall be entitled to time to respond as set forth in department policy.

- (2) The Department shall allow the Claimant an opportunity to establish residency during the period she was absent from the state in accordance with this Decision, and may utilize other means of establishing residency as set forth in BEM 220 for FAP benefits.
- (3) After completion of the redetermination process the Department shall make an eligibility determination for AMP and FAP benefits and if the Claimant is deemed eligible, the department shall issue a supplement of FAP benefits for benefits the Claimant was otherwise entitled to receive and reinstate the Claimant's AMP benefits retroactive to the date of closure.



Lynn M. Ferris
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 9/17/2010

Date Mailed: 9/17/2010

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 of the rehearing decision.

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cc: [REDACTED]

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