

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: 2010-3383
Issue No: 3025
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 23, 2009
Macomb County DHS

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 upon claimant's request for a hearing. After due notice, a hearing was held on November 23, 2009.

ISSUE

Was the claimant's FAP case properly placed into closure and recoupment because of claimant's 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) Claimant was an FAP recipient in Macomb County.
- (2) No person in claimant's proposed FAP group is a citizen of the United States; however, claimant's group members are all legal residents of the United States.

- (3) Claimant and her family have been granted asylum status pursuant to section 208(C) of the Immigration and Nationality Act.
- (4) On September 30, 2009, DHS came to the notion that claimant had been erroneously been receiving food stamps, and claimant's FAP case was placed into closure for a failure to meet residency requirements.
- (5) DHS immediately started recoupment proceedings, requesting recoupment in the amount of \$3, 368.
- (6) On August 24, 2009, claimant requested a hearing into the matter.

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 (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 Bridges Reference Manual (BRM).

A person must be a U.S. citizen or have an acceptable alien status for the designated programs. BEM 225. There are several acceptable alien statuses for the purposes of the FAP program, including refugee status and disability status, among others. However, if a claimant does not meet those statuses, the claimant must be a person who has lived in the U.S. as a qualified alien for at least five years since their date of entry in order to be eligible for FAP benefits. BEM 225. All resident aliens must be qualified aliens in order to be eligible for benefits; however not all qualified aliens have the appropriate alien status necessary to be

eligible for benefits. BEM 225. Generally speaking, a qualified alien is a resident who has been legally admitted into the United States. BEM 225.

Claimant entered the country on March 1, 2006. There is no dispute as to claimant's legal status; claimant possesses a legal permanent residence card, and is a legal resident of the United States. However, this status only speaks to whether claimant is a qualified alien. Not all qualified aliens are eligible for FAP benefits. BEM 225. In order to be eligible for FAP benefits, a qualified alien must also have an acceptable residence status. These acceptable statuses include, among other things, being a qualified military alien, a holder of immigration status RE or AS, certain refugees and asylum seekers, battered aliens, members of the Hmong tribe, and disabled aliens. Most importantly, for the purposes of this case, a claimant who enters the United States pursuant to a grant of asylum under Section 208 of the Immigration and Naturalization Act is eligible for FAP benefits for seven years following admittance. BEM 225.

On September 30, 2009, with no obvious examination of claimant's background, the Department closed claimant's FAP case, decreeing that claimant had been awarded FAP by mistake. The Department, with no apparent investigation, decided that claimant did not have an acceptable residence status to qualify for FAP benefits. Claimant's FAP case was immediately terminated, and claimant was told that she would have to pay the Department \$3368 dollars in benefits.

The Administrative Law Judge left the hearing record open for the claimant to attempt to secure information regarding her immigration status. One day after the hearing, the Department representative faxed the undersigned a copy of claimant's immigration paperwork. The undersigned is unsure as to which party secured this evidence.

This paperwork contains claimant's picture, name, and is stamped "ASYLUM STATUS GRANTED PURSUANT TO SECTION 208(C) OF THE IMMIGRATION AND NATIONALITY ACT. VALID TO INDEFINITE".

After an examination of this paper, the undersigned is of the opinion that this is prima facie evidence of claimant possessing an acceptable residence status. This means that not only is claimant ineligible for recoupment (as she was properly receiving benefits), but claimant should never have had her case closed in the first place.

The Department cannot close or terminate benefits without a supporting policy reason to do so. Claimant was apparently placed into negative action with no thorough examination into her actual status. If there were questions as to claimant's alien status, whether from lost documents, or lack of notation, the Department should have asked the claimant, or conducted some sort of rudimentary investigation. When it did not do so, it was in error.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's placement of claimant's case into negative action was incorrect.

Accordingly, the Department's decision in the above stated matter is, hereby, REVERSED.

Recoupment is DENIED.

The Department is ORDERED to reinstate claimant's FAP case retroactively to the date of negative action. The Department is FURTHER ORDERED to supplement claimant with any

benefits claimant did not receive as a result of the negative action, retroactive to the date of negative action.



Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 01/04/10

Date Mailed: 01/08/10

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.

RJC/dj

cc:

