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

IN THE MATTER OF:

Reg. No. Issue No. Case No. Hearing Date: 201120926 2006 3008

March 23, 2011 Wayne County DHS (17)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the c laimant's request for a hearing. After due notice, a telephone hearing was held on Ma rch 23, 2011. The claimant appeared and testified. appeared on behalf of Claimant as Claimant's translator and authorized hearing representative (AHR). On behalf of Department of Human Serv ices (DHS), and appeared and testified.

ISSUES

- 1. Whether DHS properly terminated Cla imant's Food As sistance Program (FAP) benefits due to an alleged failure by Claimant to report self-employment income.
- 2. Whether DHS properly terminated Claim ant's Medical Assistance (MA) benefits due to an alleged failure by Claimant to report self-employment income.

FINDINGS OF FACT

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

- 1. Claimant was an ongoing FAP and MA benefit recipient.
- 2. Claimant originally reported to DHS an address on
- 3. Claimant also orig inally reported that he di d not live in a household with his spouse.
- 4. On an unspecified date, DHS learned that Claimant's spouse also received FAP and MA benefits and also listed an address of

- 5. In 10/2010, Claimant changed his address with the Michi gan Secretary of State to .
- 6. Beginning 2/2010, DHS init iated an investigation c oncerning who liv ed in Claimant's household on
- 7. On a separate part of the investigat ion, DHS concluded t hat Claimant was the owner of
- 8. On 11/26/10, DHS requested informati on concerning Claimant 's alleged inc ome from
- 9. Claimant never provided self-employment income for and denied o wning the business.
- 10. On 12/16/10, DHS initiated termination of Claimant's MA and FAP benefits on the basis of Claimant's failure to verify self-employment income; DHS also claims the termination was partially based on Claim ant's alleged misr eporting of household members.
- 11. On 1/26/11, Claimant requested a hearin g disputing the MA and FAP benefit termination.

CONCLUSIONS OF LAW

The Food Assistanc e Program (formerly known as the Food Stamp Program) is established by the Food Stam p Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of F ederal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the Food Assistance Program pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administ rative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT). Updat es to DHS regulations are found in the Bridges Policy Bulletin (BPB).

In the present case, DHS terminated Claim ant's (and his spouse's) FAP benefits and MA benefits on the basis of a failure to prov ide information. DHS alleges that Claiman t misinformed DHS about two issues, hi s household members and self-employment income. The undersigned will f irst consid er Claiman t's alleg ed failure to cooperate concerning household members.

FAP group composition is established by determining: who lives together, the relationship(s) of the people who live toge ther, whether the p eople livin g together purchase and prepare food together or separate ly and whether the person(s) resides in an eligible living situation. BEM 212 at 1. The relations hip(s) of the people who live together affects whether they must be included or excluded from the group. *Id.* Based on the aforementioned policy, it is found that Claimant 's address and household

members was information that DHS prop erly needed to determine Claimant's FAP benefits.

It was not disputed that Claim ant's reporting documents consistently listed Claimant as a single household member not living with his spouse. It was also not disputed that Claimant's spouse received F AP benefits on a separate case but listed the same residential address as Claimant. DHS event ually discovered the conflict between Claimant's and his spouse's documents and investigated the discrepancy.

Claimant's DHS specialist testified that when she called Claimant about the discrepancy and spoke with an unspecified me mber of Claimant's household that she w as told that Claimant would change his addr ess with the Secretary of State so Claimant could continue to collect FAP benefits. DHS intended the testimony to show that Claimant was willing to misrepresent his addr ess with the Secretary of St ate for the sole purpose of collecting more FAP benefits than for whic h he was entitl ed. The DHS testimony was relevant and, if interpreted as DHS inten ded, would be evidence that would diminish Claimant's credibility.

DHS also presented various inv estigation reports which DHS c laims are e vidence that Claimant and his spouse deceived DHS about their residence and household members. Though the undersigned accepted the reports as exhibits, DHS failed to present any of the investigators as witnesses to supp ort the authenticity and acc uracy of the investigative conclus ions. The weight giv en to the investigation r eports is diminish ed based on the absence of any persons.

The findings of the investigations were not nearly as damning to Claimant as DHS indicated. Three pages of the investigative reports (those dated 2/20/10 and one dated 3/17/10) had no investigative findings and mere ly reflected the allegations made by Claimant's specialist. The undersigned gives these documents no weight in proving any allegations against Claimant.

Under "Investigation Findings" a report dat ed 10/12/10 stated "Agency clos ed the cas e after client refused to provide separatio n documents. A chec k of the DHS Bridges System and the Michigan Secret ary of State shows that client, spouse, continue to reside in the same househ old. FEE investigation closed." Under "Investigation F indings" on a report dated 10/26/10, the investigator states that he or she was told by Claimant's daughter in-law that Claimant's spouse was separated from Claimant. This finding supports Claimant's testimony, not DHS'. Finally a report dated 12/22/10 stated that Claimant failed to respond to visits by the investigator. This report also stated t hat the matter would be referred for full investigation.

Based on all of the evidence, DHS failed to establish a basis to terminate Claimant's FAP and MA benefits based on the issue concerning Claimant's household members. A failure by Claimant to respond to an investigation is not proof of fraud by Claimant. The statement by an uns pecified member of Cla imant's family to his specialist may be evidence of fraud but could hav e simply been an admission that Cla imant's address needed to be updated with the Secr etary of State. The in vestigator comments made

references to a lack of separation doc uments presented by Claimant, however the undersigned is not troubled by t his. It is t he experience of the undersigned that most marriage separations are not done through t he courts. DHS regulations do not specifically require separations to be verified by legal documents.

Most importantly, at the time DHS terminated Claimant's FAP and SSI benefits, it was not disputed that Claimant previously updated his address with the Secretary of State to reflect a different address from that of his wife. It is possible that the address change was solely done to deceive DHS concerning who lives with Claimant, but there is no significant evidence to prove this.

The evidence showed that Claimant's fam ily own numerous properties within a clos e proximity and a verification of a different address from that of a spouse is easier to fake when Claimant has the luxury of receiving ma il at different properties his family owns . Nevertheless, there is insufficient evidence to justify FAP and MA benefit closure based on household members.

The second basis for Claimant's failure to cooperate was based on an alleged business owned by Claimant. DHS contends that Claimant failed to report owning a clothing store and accordingly, failed to report self-emplo yment income to D HS. Claim ant denied ownership of a clothing store.

DHS is to send a negative action notice when the client indicates a refusal to provide a verification, or the ti me period given ha s elapsed and the client has not made a reasonable effort to provide it. BAM 130 at 5. It was not disputed that DHS requested a verification of Claima nt's self-employment in come and that Claimant failed to retur n verification of the inc ome. What was disputed is whe ther Claimant actually had self-employment income.

DHS pres ented six pages of documents obt ained from the Department Labor and Economic Growth that verify business do cuments for located at owner of the business is

Claimant's DHS specialist contended that the documents were obtained using Claimant's social security number but the specialist had no first hand knowledge of how the documents were obtained. The documents were obtained by a ninvestigator who failed to testify at the administrative hearing. No evid ence was presented indic ating what information was inputted to obtain the document; this is problematic for DHS' case. If evidence was submitted that the document swere directly obtained after inputting Claimant's Social Sec urity number, this would be persuasive evidence that was owned by Claimant because Social Security numbers are tiled to specific individuals. Based on the evidence presented, it is equally possible that the investigator inputted Claimant's name which led to a hit on a different individual than Claimant but with a similar name.

DHS contended that s ubmitted documents showed Claim ant used many v ariations in the spelling of his name and that this is pr oof that Claimant is t he owner of The

evidence did not support the DHS cont ention. DHS pres ented zero evidence that indicated Claimant ever used the variation of his name t hat was listed on the ownership documents. Even more compelling, none of the document s indicate that Claimant ever varied the spelling of his name. Some of the documents listed aliases for possible relatives of Claimant but that has nothing to do with Claimant's circumstances.

DHS only established that a person with a name similar to Claimant's owned a clothing store. DHS failed to tie Claim ant to the business in any way except the similarit y between Claimant's name and the busines s ow ner's name. Based on the totality of evidence presented, it is f ound that DHS failed to estab lish that Claimant owned a business and was therefore unc ooperative in verifying income. It should be noted that this decision makes no findings as to whether Claimant did or did not own a business or did or did not live with his spouse; it is only found that DHS failed to establis h that they properly terminated Claimant's FAP and MA benefits based on the evidence presented.

Note that this decision is favorable for Cla imant but only applies to the DHS termination of FAP and MA benefits that occurred on 12/16/10. DHS is not barred from taking future adverse actions against Claimant's FAP or MA benefits for the exact reasons that wer e used in the present case. If such a scena rio occurs, Claimant can a gain request a hearing to dispute such future adverse DHS actions.

DECISION AND ORDER

The Administrative Law Judge, based upon t he above findings of fact and conclusion s of law, finds that DHS improperly terminat ed Claim ant's FAP and MA benefits. It is ordered that DHS reinstate Claimant's ongoing FAP and MA benefits effective 1/2011 and that Claimant is supplemen ted for any benefits not received as a result of the improper termination. The actions taken by DHS are REVERSED.

Christin Bardoch

Christian Gardocki Administrative Law Judge For Maura Corrigan, Director Department of Human Services

Date Signed: 04/04/11

Date Mailed: 04/06/11

NOTICE: Administrative Hearings may or der a rehearing or reconsideration on either its own motion or at t he request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hear ings will not orde r a rehearing or reconsideration on the Department's mo tion where the final decis ion 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.

