

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2011-32371
Issue No.: 3025
Case No.: [REDACTED]
Hearing Date: June 1, 2011
DHS County: Wayne (82-17)

ADMINISTRATIVE LAW JUDGE: Jan Leventer

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to Michigan Compiled Laws (MCL) 400.9 and 400.37 and Claimant [REDACTED] request for a hearing. After due notice, a telephone hearing was held on June 1, 2011. Claimant appeared and testified. [REDACTED]

[REDACTED], appeared and testified on behalf of the Department of Human Services (DHS).

ISSUE

Whether DHS correctly determined that Claimant's wife was not eligible to be included in Claimant's family group for Food Assistance Program (FAP) purposes?

FINDINGS OF FACT

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

1. On January 25, 2011, Claimant applied to DHS for FAP benefits for himself, his wife, and their four children.
2. Claimant's wife is a permanent resident alien who has been in the United States less than five years.
3. On March 28, 2011, DHS approved Claimant and his children for FAP benefits and determined that Claimant's wife was ineligible for FAP because she is a permanent resident alien who has been in the United States for less than five years.

4. Neither Claimant nor his wife are refugees (RE), Amerasians (AM), or Asylum Seekers (AS).
5. Neither Claimant nor his wife has at least forty countable Social Security work credits.
6. Neither Claimant nor his wife is a qualified military alien, or the spouse or dependent child of a qualified military alien.
7. On August 22, 1996, neither Claimant nor his wife was sixty-five years old or older, nor were they lawfully residing in the United States at that time.
8. Neither Claimant nor his wife is Hmong or Laotian, a Hmong or Laotian spouse, an unmarried dependent child currently under age eighteen, or an unremarried surviving spouse.
9. Neither Claimant nor his wife is currently blind or disabled.
10. Both Claimant and his wife are over eighteen years of age.
11. On November 23, 2010, DHS denied FAP benefits to Claimant and granted Claimant's MA and AMP application for emergency medical services only.
12. On April 22, 2011, Claimant filed a request for hearing notice with DHS.

CONCLUSIONS OF LAW

FAP was established by the U.S. Food Stamp Act of 1977 and is implemented by Federal regulations contained in Title 7 of the Code of Federal Regulations. DHS administers the FAP program pursuant to MCL 400.10 *et seq.* and Michigan Administrative Code Rules 400.3001-400.3015. DHS' policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables (RFT). These manuals are available online at www.michigan.gov/dhs-manuals.

BAM, BEM and RFT are the policies and procedures DHS officially created for its own use. While the DHS manuals are not laws created by the U.S. Congress or the Michigan Legislature, they constitute legal authority which DHS must follow. It is to the manuals that I look now in order to see what policy applies in this case. After setting forth what the applicable policy is, I will examine whether it was in fact followed in this case.

The Department has referred me to BEM 225, "Citizenship/Alien Status." DHS refers specifically to page 26, and I reviewed it. I agree that it is the policy that must be applied in this case.

BEM 225, p. 26, is a page of a chart, "Exhibit II – Citizenship/Alien Status Table." The chart indicates what the citizenship requirements are for six different DHS benefit programs, including FAP. I find that Claimant is in the category of persons identified on line 10 of this page, "U.S. entry on or after 8/22/96 – First five years in U.S." I find that the BEM 225 chart states that this category of individuals is not eligible for FAP benefits except under certain circumstances:

1. Claimant is a qualified military alien, or the spouse or dependent child of a qualified military alien.
2. Claimant has at least forty countable Social Security work credits.
3. Claimant was sixty-five or older, and also was residing in the United States, on August 22, 1996.
4. Claimant is Hmong or Laotian and lawfully resides in the U.S., or is the spouse, unmarried dependent child now under age eighteen, or the unremarried surviving spouse of a Hmong or Laotian person.
5. Claimant is blind or disabled.
6. Claimant is less than eighteen years old.

In conclusion, based on the findings of fact and conclusions of law above, I find and conclude that Claimant's wife does not meet any of these criteria, and DHS properly denied FAP benefits to Claimant's wife. I AFFIRM DHS' denial of FAP benefits to Claimant's wife in this case. DHS need take no further action in this matter.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, AFFIRMS the action taken by DHS in this case. DHS need take no further action in this case.



Jan Leventer
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: June 8, 2011

Date Mailed: June 8, 2011

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.

JL/pf

cc:

