

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

IN THE MATTER OF:



Reg. No: 2011-36673

Issue No: 3016, 3008



SSPC West

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the DHS client's (referred to as "the claimant") request for a hearing received on June 2, 2011. After due notice, a telephone hearing was held on July 7, 2011. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly deny the claimant's application for Food Assistance Program (FAP) benefits?

FINDINGS OF FACT

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

1. The claimant applied for FAP benefits on April 28, 2011. (Hearing Summary).
2. On May 2, 2011, the department mailed the claimant a verification checklist (DHS-3503-C) which requested the claimant forward proof of income and employment by May 12, 2011. (Department Exhibits 4 & 5).
3. On May 12, 2011, the claimant provided the department with 2 (two) weekly pay stubs representing the last two weeks of April, 2011, but the claimant did not provide pay stubs from April 6, 2011 and April 13, 2011. (Department Exhibits 25 & 26).
4. The department denied the claimant's application for FAP benefits on May 17, 2011. (Department Exhibit 7).
5. On May 17, 2011, the department mailed the claimant a Notice of Case Action (DHS-1605) indicating: (1) effective April 1, 2011, the claimant does

not meet the criteria for eligibility for FAP due to his student status and (2) the claimant's application for FAP benefits was denied for failure to provide necessary verification information. (Notice of Case Action)

6. On June 2, 2011, the claimant submitted a hearing request contesting the denial of his application for FAP benefits. (Request for a Hearing).

CONCLUSIONS OF LAW

The client has the right to request a hearing for any action, failure to act or undue delay by the department. BAM 105. The department provides an administrative hearing to review the decision and determine its appropriateness. BAM 600.

The regulations that govern the hearing and appeal process for applicants and recipients of public assistance in Michigan are contained in the Michigan Administrative Code (Mich Admin Code) Rules 400.901 through 400.951. An opportunity for a hearing shall be granted to a recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. Mich Admin Code 400.903(1).

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. The department's policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Actual income is income that was already received. Prospective income is income not yet received but expected. Prospective budgeting is the best estimate of the client's future income. BEM 505.

Verification is usually required upon application or redetermination and for a reported change affecting eligibility or benefit level. BAM 130. Clients must take actions within their ability to obtain verifications and DHS staff must assist when necessary. BAM 105. Specifically, the local office must assist clients who ask for help in completing forms or gathering verifications. BAM 105 and BAM 130. The department must allow a client 10 calendar days (or other time limit specified in policy) to provide the requested verification. BAM 130. Should the client indicate a refusal to provide a verification or, conversely, if the time period given has elapsed and the client has not made a reasonable effort to provide it, the department may send the client a negative action notice. BAM 130.

Verifications are considered timely if received by the date they are due. BAM 130. For FAP only, if the client contacts the department prior to the due date requesting an extension or assistance in obtaining verifications, you must assist them with the verifications but do not grant an extension. BAM 130.

Effective April 1, 2011, clients in student status are no longer eligible to receive FAP benefits based solely on an approved education plan. A person is in student status if the person is 18 through 49 years old and enrolled half-time or more in a: (i) vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate; or a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245.

In order for a person in student status to be eligible for FAP benefits, they must meet one of the following criteria:

- Receiving Family Independence Program benefits.
- Enrolled in an institution of higher education as a result of participation in:
 - Approved employment -related activities.
 - A JTPA program.
 - A program under Section 236 of the Trade Readjustment Act of 1974.
 - Another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year. To qualify under this student status eligibility provision, the student must be approved for work study during the school term and anticipate actually working during that time, unless exempted because the student:
 - Starts the month the school term begins or the month work study is approved, whichever is later.
 - Continues until the end of the month in which the school term ends, or when you become aware that the student has refused a work-study assignment.
 - Remains between terms or semesters when the break is less than a full month, or the student is still participating in work study during the break.

- Providing more than half of the physical care of a group member under the age of six.
- Providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate child care is not available to:
 - Enable the person to attend class and work at least 20 hours per week.
 - Participate in a state or federally-financed work study program during the regular school year.
- A single parent enrolled full-time in an institution of higher education that cares for a dependent under age 12. This includes a person who does not live with his or her spouse, who has parental control over a child who does **not** live with his or her natural, adoptive or stepparent. BEM 245.

For the care of a child under age six, the department shall consider the student to be providing physical care as long as he or she claims primary responsibility for such care, even though another adult may be in the FAP group. Moreover, when determining the availability of adequate child care for a child between the ages of six and 11, another person in the home, over 18 years of age, need not be a FAP group member to provide care. BEM 245.

A person remains in student status while attending classes regularly. Student status continues during official school vacations and periods of extended illness. Student status does not continue if the student is suspended or does not intend to register for the next school term (excluding summer term). BEM 245.

Here, the claimant disputes the department's decision to deny his application for FAP benefits for failure to timely provide a Verification Checklist (DHS-3503-C) which requested the claimant forward proof of income and employment by May 12, 2011. The claimant is employed and is paid weekly. On May 12, 2011, the claimant faxed the department two pay stubs representing two weeks of income in April, 2011. However, the claimant did not provide the department with check stubs from the first two weeks of April, 2011 within the 10 day deadline. Accordingly, the department properly closed the claimant's Food Assistance Program for failure to return the verification information on a timely basis.

In the alternative, the claimant does not otherwise meet the eligibility criteria at the time that the department denied his application for FAP benefits due to his student status. The claimant does not receive FIP benefits. He is not enrolled in an institution of higher education as a result of participation in (1) approved employment related activities, (2) a JTPA program, (3) a program under Section 236 of the Trade Readjustment Act of 1974, or (4) any other State or local government employment and training program. The claimant is employed and is neither physically nor mentally unfit for employment. Although the claimant is a paid employee, he is not employed for at least 20 hours per week. The claimant testified that he averages between 16 and 24 hours per week, but not at least 20 hours per week. The claimant is not self-employed nor did he provide

evidence that he was actively participating in an on-the-job training program at the time of application. (A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.) There was also no evidence that the claimant was participating in a state or federally-funded work study program at the time of application.

This Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, the department acted in accordance with the applicable policy in denying the claimant's FAP benefits case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department acted in accordance with policy in determining the claimant's FAP eligibility.

Accordingly, the department's FAP eligibility determination is AFFIRMED.

It is SO ORDERED.

/s/ _____
C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 7/13/11

Date Mailed: 7/13/11

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.

CAP/ds

