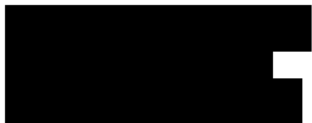


STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201135786  
Issue No: 3016  
Case No: [REDACTED]  
Hearing Date: June 28, 2011  
Saginaw County DHS

Administrative Law Judge: Mark A. Meyer

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge in accordance with MCL 400.9, MCL 400.37 and 1979 AC, R 400.903. Claimant requested a hearing on May 3, 2011, and, after due notice, one was held on June 28, 2011. Claimant appeared at hearing and provided testimony. The Department of Human Services (the Department) was represented by agency personnel.

**ISSUE**

In dispute was whether the Department properly closed Claimant's Food Assistance Program (FAP) benefits, where he failed to meet the student status requirements.

**FINDINGS OF FACT**

Based on the competent, material, and substantial evidence on the whole record, the Administrative Law Judge finds as relevant fact:

1. Claimant was receiving FAP benefits at all times pertinent to this hearing.
2. In March 2011, the Department issued a notice of case action (DHS-1605) against Claimant, advising him that his FAP benefits case would be closed, effective April 1, 2011. The basis for case closure was that Claimant no longer met the student status criteria for FAP benefit eligibility. (Department's notice of case action, dated March 13, 2011).
3. From the Department's FAP determination, Claimant filed a request for hearing, contesting the termination of his monthly benefits. (Claimant's hearing request, dated May 3, 2011.)

## CONCLUSIONS OF LAW

The hearing and appeals process for applicants and recipients of public assistance in Michigan is governed by 1979 AC, R 400.901 through 400.951, in accordance with federal law. An opportunity for hearing must be granted to an applicant who requests a hearing because his claim for assistance is denied or not acted on with reasonable promptness, and to any recipient who is aggrieved by Department action resulting in suspension, reduction, discontinuance, or termination of assistance. Rule 400.903(1). An applicant or recipient holds the right to contest an agency decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department must provide an administrative hearing to review the decision and determine its appropriateness. Bridges Administrative Manual (BAM) 600, p 1.<sup>1</sup>

Here, the Department determined that, effective April 1, 2011, Claimant no longer met the student status criteria for receipt of FAP benefits. Claimant filed a request for hearing to contest this action.

FAP – formerly known as the Food Stamp Program – was established by the Food Stamp Act of 1977, 7 USC 2011, *et seq.*, as amended, and is implemented through federal regulations found in the Code of Federal Regulations, 7 CFR 273.1 *et seq.* The Department administers the FAP under MCL 400.10, *et seq.*, and Rules 400.3001 through 400.3015. Agency policies pertaining to the program are found in the BAM, Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Effective April 1, 2011, persons in student status were no longer eligible to receive FAP benefits based solely on an approved education plan. For purposes of the program, a person is in student status if eighteen through forty-nine years old and enrolled at least half-time in: (1) a vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate; or (2) a regular curriculum at a college or university that offers degree programs, regardless of whether a diploma is required. BEM 245, pp 2-3.

For a person in student status to be eligible for FAP benefits, however, he or she must also meet one of the following criteria:

- Receiving Family Independence Program (FIP) benefits.
- Enrolled in an institution of higher education as a result of participation in:
  - Approved employment -related activities.
  - A JTPA program.

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<sup>1</sup> All citations are to Department of Human Services (Department) policy in effect at the time of the agency action in issue.

- A program under 19 USC 2296, part 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.
- Participating in a State or federally-funded work study program 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 who cares for a dependent under age 12.

BEM 245, pp 3-4.

For the care of a child under age six, the Department must 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. BEM 245, p 4.

Here, the evidence presented established that Claimant was in student status as determined under BEM 245. Based on his testimony, however, he did not meet any of the criteria necessary for receiving FAP benefits. According to Claimant, he was not receiving any benefits under the FIP, was not employed, nor participating in any federal or State employment program, work study program, or on-the-job training. Claimant provided no credible evidence that he was physically or mentally unfit for employment. Finally, although Claimant testified that he "watched his kids during the weekends and sometimes during the week," it appeared that this occurred on an irregular basis. There was no indication that he provided more than one-half of the physical care of his children, or that he had primary responsibility for such care. See BEM 245, p 4.

Thus, Claimant failed to sufficiently establish that he met one or more of the eligibility criteria for receiving FAP benefits under the student status policy.

#### **DECISION AND ORDER**

Based on the above findings of fact and conclusions of law, the Administrative Law Judge decides that the Department acted properly in closing Claimant's FAP benefits case, effective April 1, 2011.

The Department's action is UPHELD.

It is SO ORDERED.

/s/

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Mark A. Meyer  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: June 29, 2011

Date Mailed: June 30, 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.

Claimant may appeal this decision and order to circuit court within 30 days of its receipt or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

MAM/cr

cc:

