

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

IN THE MATTER OF:

[REDACTED]

Reg. No. 201120926
Issue No. 2006 3008
Case No. [REDACTED]
Hearing Date: 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 claimant's request for a hearing. After due notice, a telephone hearing was held on March 23, 2011. The claimant appeared and testified. [REDACTED] appeared on behalf of Claimant as Claimant's translator and authorized hearing representative (AHR). On behalf of Department of Human Services (DHS), [REDACTED] and [REDACTED] appeared and testified.

ISSUES

1. Whether DHS properly terminated Claimant's Food Assistance Program (FAP) benefits due to an alleged failure by Claimant to report self-employment income.
2. Whether DHS properly terminated Claimant'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 the 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 of [REDACTED]
3. Claimant also originally reported that he did 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 [REDACTED]

5. In 10/2010, Claimant changed his address with the Michigan Secretary of State to [REDACTED].
6. Beginning 2/2010, DHS initiated an investigation concerning who lived in Claimant's household on [REDACTED].
7. On a separate part of the investigation, DHS concluded that Claimant was the owner of [REDACTED].
8. On 11/26/10, DHS requested information concerning Claimant's alleged income from [REDACTED].
9. Claimant never provided self-employment income for [REDACTED] and denied owning 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 Claimant's alleged misreporting of household members.
11. On 1/26/11, Claimant requested a hearing disputing the MA and FAP benefit termination.

CONCLUSIONS OF LAW

The Food Assistance Program (formerly known as the Food Stamp 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 (formerly known as the Family Independence Agency) administers the Food Assistance Program pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative 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). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

In the present case, DHS terminated Claimant's (and his spouse's) FAP benefits and MA benefits on the basis of a failure to provide information. DHS alleges that Claimant misled DHS about two issues, his household members and self-employment income. The undersigned will first consider Claimant's alleged failure to cooperate concerning household members.

FAP group composition is established by determining: who lives together, the relationship(s) of the people who live together, whether the people living together purchase and prepare food together or separately and whether the person(s) resides in an eligible living situation. BEM 212 at 1. The relationship(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 properly needed to determine Claimant's FAP benefits.

It was not disputed that Claimant'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 FAP benefits on a separate case but listed the same residential address as Claimant. DHS eventually 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 member of Claimant's household that she was told that Claimant would change his address 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 address with the Secretary of State for the sole purpose of collecting more FAP benefits than for which he was entitled. The DHS testimony was relevant and, if interpreted as DHS intended, would be evidence that would diminish Claimant's credibility.

DHS also presented various investigation reports which DHS claims are evidence 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 support the authenticity and accuracy of the investigative conclusions. The weight given to the investigation reports is diminished 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 merely 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 dated 10/12/10 stated "Agency closed the case after client refused to provide separation documents. A check of the DHS Bridges System and the Michigan Secretary of State shows that client, [REDACTED] and spouse, [REDACTED] continue to reside in the same household. FEE investigation closed." Under "Investigation Findings" 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 that 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 unspecified member of Claimant's family to his specialist may be evidence of fraud but could have simply been an admission that Claimant's address needed to be updated with the Secretary of State. The investigator comments made

references to a lack of separation documents presented by Claimant, however the undersigned is not troubled by this. It is the experience of the undersigned that most marriage separations are not done through the 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 family own numerous properties within a close proximity and a verification of a different address from that of a spouse is easier to fake when Claimant has the luxury of receiving mail 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-employment income to DHS. Claimant 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 time period given has 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 Claimant's self-employment income and that Claimant failed to return verification of the income. What was disputed is whether Claimant actually had self-employment income.

DHS presented six pages of documents obtained from the Department Labor and Economic Growth that verify business documents for [REDACTED] located at [REDACTED]. The documents indicate the owner of the business is [REDACTED].

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 an investigator who failed to testify at the administrative hearing. No evidence was presented indicating what information was inputted to obtain the document; this is problematic for DHS' case. If evidence was submitted that the documents were directly obtained after inputting Claimant's Social Security number, this would be persuasive evidence that [REDACTED] was owned by Claimant because Social Security numbers are tied 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 submitted documents showed Claimant used many variations in the spelling of his name and that this is proof that Claimant is the owner of [REDACTED]. The

evidence did not support the DHS contention. DHS presented zero evidence that indicated Claimant ever used the variation of his name that was listed on the ownership documents. Even more compelling, none of the documents 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 Claimant to the business in any way except the similarity between Claimant's name and the business owner's name. Based on the totality of evidence presented, it is found that DHS failed to establish that Claimant owned a business and was therefore uncooperative 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 establish that they properly terminated Claimant's FAP and MA benefits based on the evidence presented.

Note that this decision is favorable for Claimant 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 were used in the present case. If such a scenario occurs, Claimant can again request a hearing to dispute such future adverse DHS actions.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly terminated Claimant'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 supplemented for any benefits not received as a result of the improper termination. The actions taken by DHS are REVERSED.



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 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 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.

CG/dj

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