

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

IN THE MATTER OF:



Reg. No: 20123547
Issue No: 3016
Case No: [REDACTED]
Hearing Date: November 10, 2011
Mecosta County DHS

ADMINISTRATIVE LAW JUDGE: **Suzanne D. Sonneborn**

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received on September 29, 2011. After due notice, a telephone hearing was held on November 10, 2011. Claimant personally appeared and provided testimony.

ISSUE

Whether the Department of Human Services (Department) properly denied Claimant's application for Food Assistance Program (FAP) benefits due to Claimant's student status?

FINDINGS OF FACT

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

1. On September 20, 2011, Claimant applied for FAP benefits. (Department Exhibit 1)
2. On September 29, 2011, the Department mailed Claimant a Notice of Case Action (DHS 1605), advising Claimant that her application for FAP benefits had been denied for the reason that Claimant does not meet the criteria for student status eligibility. (Department Exhibit 2)
3. On September 29, 2011, Claimant filed a hearing request contesting the Department's denial of her FAP application. (Request for a Hearing)

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 1.¹

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 (CFR), 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 FAP are found in the BAM, Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

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

In order for an individual in student status to be eligible for FAP benefits, the individual 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.

¹ All citations are to Department policy in effect at the time of the agency action in issue.

- 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 who 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.

In this case, Claimant testified at the hearing that the department should not have denied her FAP benefits application because she is a full-time university student with no earned or unearned income and she is pregnant. However, BEM 245 expressly provides that a person is considered to be in student status if she "is a single *parent* enrolled full-time in an institution of higher education who cares for a dependent under age 12." BEM 245. (Emphasis added). While Claimant is pregnant with a child, she is not a parent until she delivers that child.

This Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, the Department acted in accordance with policy in determining that Claimant was not eligible for FAP benefits due to her student status.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, and for the reasons stated on the record, decides that the Department acted in accordance with policy in determining that Claimant was not eligible for FAP benefits due to his student status.

The Department's actions are **UPHELD**. It is SO ORDERED.

/s/ _____
Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: November 14, 2011

Date Mailed: November 14, 2011

NOTICE: The Michigan Administrative Hearing System (MAHS) 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. MAHS 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.

SDS/cr

cc:

