

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-38121
Issue No.: 3000
Case No.: [REDACTED]
Hearing Date: June 14, 2012
County: Oakland (63-02)

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a in-person hearing was held on June 14, 2012, from Madison Heights, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly deny Claimant's application close Claimant's case for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP)? | <input type="checkbox"/> Adult Medical Assistance (AMP)? |
| <input checked="" type="checkbox"/> Food Assistance Program (FAP)? | <input type="checkbox"/> State Disability Assistance (SDA)? |
| <input type="checkbox"/> Medical Assistance (MA)? | <input type="checkbox"/> Child Development and Care (CDC)? |

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 applied for benefits received benefits for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP). | <input type="checkbox"/> Adult Medical Assistance (AMP). |
| <input checked="" type="checkbox"/> Food Assistance Program (FAP). | <input type="checkbox"/> State Disability Assistance (SDA). |
| <input type="checkbox"/> Medical Assistance (MA). | <input type="checkbox"/> Child Development and Care (CDC). |

2. On February 28, 2012, the Department
 denied Claimant's application closed Claimant's case
due to failure to meet residency requirements.
3. On February 28, 2012, the Department sent
 Claimant Claimant's Authorized Representative (AR)
notice of the denial. closure.
4. On March 5, 2012, Claimant filed a hearing request, protesting the
 denial of the application. closure of the case.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, Rule 400.3001 through Rule 400.3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACS, Rule 400.3151 through Rule 400.3180.

□ The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and 1999 AC, Rule 400.5001 through Rule 400.5015.

In February, 2012, the Office of the Inspector General for the Department (OIG), received a summary showing that Claimant had been using his FAP benefits in the State of ██████ since November 2010. Based on this statement, the Department immediately moved to close Claimant's FAP case.

While the Department is currently in the process of initiating recoupment proceedings, there has been no case filed as of the date of the hearing to establish a recoupment or an Intentional Program Violation (IPV); therefore, the Administrative Law Judge may not make a finding as to whether a recoupment or an IPV is appropriate at this time.

The only issue in the current case is whether the Department properly closed Claimant's FAP benefit case for a lack of residency in the State of Michigan. Claimant argues that he still resides in the State of Michigan, and was only in ██████ for a temporary amount of time which is not prohibited by policy.

The residency requirement for FAP benefits is defined by policy contained at BEM 220:

A person is considered a resident while living in Michigan for any purpose **other than a vacation**, even if there is no intent to remain in the state permanently or indefinitely.

Unfortunately, the policy is silent as to how long a person must leave the State of Michigan to no longer be considered a resident of Michigan. The policy glossary is silent as to this definition, and no other policy in the Department manual specifically states how long a person has to leave the State to no longer be considered a resident of Michigan.

When asked to define what constitutes specifically living in Michigan and how long a person has to leave the State to be considered not living in Michigan, the Department was unable to provide an answer.

There is no particular case law directly on point with regard to living in the State.

However, *Cervantes v. Farm Bureau*, 726 NW 2nd 73 (2006) outlined a several-pronged test to determine if a person is not "living with" another person. These prongs include whether or not the person in question maintains a separate mailing address, maintains separate possessions at the house, has legal documents showing a separate address,

maintains a separate bedroom, and relies on any financial support from the other person.

While not precisely dealing with the exact issue at hand, the Administrative Law Judge feels that the case is similar and relevant enough to make a determination as to whether Claimant was living in Michigan or, conversely, whether Claimant was living in [REDACTED], at the time of the case closure.

Furthermore, a second case, *Workman v. Detroit Automobile Inter-Ins Exch.*, 404 Mich. 477 NW 2nd 373 (1979), identified four other factors to consider when determining whether a person is domiciled in the same household, including the subjective or declared intent of the person remaining, the formality or informality of the relationship between the person and other household members, whether the place where the person lives is in the same house or within the same cartilage or upon the same premises, and the existence of another place of lodging by the person alleging residence.

The question, therefore, facing the Administrative Law Judge is whether Claimant meets the legal definition of living with a person, either domiciled in Michigan or [REDACTED] and, therefore, can be said to be living within or out of the State.

Several pieces of evidence were presented in the current case, though the Administrative Law Judge attaches no greater weight to any particular piece of evidence. Rather, the Administrative Law Judge looks to the totality of the evidence to make a determination as to Claimant's residential status.

The Department presented evidence that Claimant used his FAP benefits in [REDACTED] from November 2010 through the date of case closure. This was obtained by looking at the purchasing history for the EBT card associated with Claimant's FAP benefits.

While the Department also submitted a Lexis/Nexis search for addresses associated with Claimant, the Department representatives were unable to state exactly how those addresses were associated with Claimant's name, the accuracy of those addresses, or the procedures used to attach those addresses to Claimant. Claimant objected to the inclusion of this search, as the Department had no first-hand knowledge of the accuracy of the search results, and the objection was sustained insofar as to accuracy. The search results were entered into the record for the limited reason of showing what the Department relied upon in closing Claimant's FAP case.

Furthermore, the search results would be of limited weight regardless; the results admittedly show Claimant living in [REDACTED] but also show Claimant living in [REDACTED] and his current alleged address in Michigan during the same time periods. Therefore, the Administrative Law Judge would have to hold (even if the document was given full weight) that the search just as likely shows residency in Michigan during the time period alleged, as it shows residency in other states—including states not alleged by the Department.

Claimant also submitted evidence in the current case, including investment statements that showed Claimant's current address as in Michigan, tax filings that showed Claimant's Michigan residence, a vehicle registration addressed to Claimant's Michigan address, health insurance premiums addressed to Claimant's Michigan address, loan payments addressed to Claimant's Michigan address, and an uncontested statement that Claimant was still paying rent in Michigan.

Claimant testified to other factors as well, which the undersigned found credible, and are informative to the current case. Claimant never commingled his personal property with that of the person he was staying with in [REDACTED]. Claimant only had very limited personal property in Colorado and maintained most of his personal property, including furniture, in Michigan. Claimant maintained his address in Michigan for all of his accounts, loans, vehicles, and taxes. Claimant never changed his driver's license to [REDACTED]. Claimant never changed his address in [REDACTED].

When examining the totality of the evidence in this case to the factors set forth in *Cervantes* and *Workman*, the analysis weighs heavily in favor of a determination that claimant's residence is in Michigan.

With regard to the *Workman* case, Claimant has declared that he is a resident of Michigan; Claimant had a formal agreement for rent at his Michigan address and paid that rent, even while located in [REDACTED]; Claimant's living space in [REDACTED] was with a friend and he did not maintain his own space, as evidenced by the lack of personal possessions in [REDACTED]; and; Claimant had no other established or permanent place of lodging while outside the State of Michigan.

With regard to the *Cervantes* case, the test there weighs heavily in favor of a determination that Claimant never changed his residence from Michigan. Specifically, his mailing address remained in Michigan; the vast majority of his personal possessions remained in Michigan; the address on Claimant's legal documents was not changed to [REDACTED] and remained in Michigan, and his bedroom and residence was always maintained in Michigan.

The Administrative Law Judge finds it highly persuasive that, of the factors stated in the case law as to how to determine whether a person is living in a certain place, all of the factors weigh in favor of a finding that Claimant remains a resident of Michigan.

In fact, under this analysis, Claimant could not have acquired FAP benefits in Colorado, as Claimant was still a resident of Michigan under the case law and could have been charged with fraud had he attempted to acquire such benefits.

Additionally, other factors weigh in the direction of Claimant's argument. Claimant never gave false information to the Department, and never attempted to hide the fact that he was out of state. The Department's own benefit guide does not state that Claimant cannot use his benefits outside of Michigan. Claimant was openly and

obviously using his benefits in [REDACTED], and was not stopped from using his benefits until February, 2012.

Most importantly, and perhaps most determinative, to the finding in the case is the fact that **policy does not give a maximum period of time that a FAP recipient can leave the State and still be considered a Michigan resident.** The Administrative Law Judge cannot declare an arbitrary period of time as to absence from the State to find a lack of residency. While it may seem counterintuitive that a claimant can be out of the State for an extended period and still be legally considered a resident, the fault does not lie with Claimant in this case, but rather, the policy, which does not prohibit such an absence. This ambiguity in policy shows, at the very least, that any violation of policy was unintentional, at best, because the policy does not prohibit leaving and spending FAP benefits outside the State.

Furthermore, the Department's own policy for other programs establishes a finding of residency in Michigan for when a recipient of benefits is out of State. BEM 220 states that one of the verification factors used in determining an intent to return to Michigan for the FIP and SDA programs is "evidence that rent, property taxes, utilities or house payments in Michigan are being paid." As Claimant has provided evidence that was not rebutted that he is paying rent in Michigan, the Department, had this been a different program involved, would have been bound to find that Claimant was still a resident and had intent to return.

With regard to the FAP program, the verification factors in BEM 220 also lie in claimant's favor. Claimant can verify residency simply by providing a driver's license that is current in Michigan. At the very least, had the Department asked Claimant to verify residence, Claimant would have met the verification requirements for residence for the FAP program.

Regardless, there is no policy that prevents an FAP recipient from using benefits outside the State and no policy that sets a maximum time limit as to using benefits out of the State.

Therefore, after weighing the factors and considering the test set forth by both the *Cervantes* and *Workman* courts, the Administrative Law Judge cannot help but find that Claimant is still legally a resident of Michigan. The factors in case law designed to determine whether a person is living in a certain location require a finding that Claimant is still living in Michigan and is, therefore, a resident of Michigan, as defined by policy, at the time of the case closure. Policy itself cannot be said to say that Claimant is not a resident of Michigan, and any verification procedure used in policy would direct a finding that Claimant is still a resident.

This is not to say that Claimant currently lives in Michigan, and the Department is within its right to request verifications as to Claimant's residency situation at any time that eligibility is in question. In fact, that is the procedure that should have been followed in this case. Per policy in BAM 220, the Department can request verification at any time

there is an eligibility factor that is in question. The Department failed to request this verification, and instead leapt to the conclusion that Claimant was not a resident, which is a conclusion that cannot be reached simply based upon claimant's FAP spending record and the lack of any prohibition in policy about spending benefits out of State. If the Department had doubts about eligibility, the Department could have requested verifications to establish eligibility.

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department

properly denied Claimant's application improperly denied Claimant's application
 properly closed Claimant's case improperly closed Claimant's case

for: AMP FIP FAP MA SDA CDC.

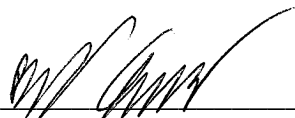
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department
 did act properly. did not act properly.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED REVERSED for the reasons stated on the record.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Remove the negative action in this case and reinstate benefits retroactive to the date of negative action.



Robert J. Chavez
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 30, 2012

Date Mailed: July 30, 2012

NOTICE: 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 90 days of the filing of the original request. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

RJC/pf

cc:

