

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-53657
Issue No.: 2005, 3025, 4020
Case No.: [REDACTED]
Hearing Date: June 20, 2012
County: Macomb 36

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 following Claimant's request for a hearing. After due notice, a telephone hearing was held on June 20, 2012, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] (Authorized Hearing Representative (AHR)/Case Manager from Macomb County Community Mental Health). Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist) and [REDACTED] (Eligibility Specialist).

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP), Medical Assistance (MA)/Adult Medical Program (AMP) and State Disability Assistance (SDA) cases due to failure to provide proof of citizenship or immigration status?

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 is a native and citizen of Iraq.
2. Claimant entered the United States on or about November 19, 1992 as a Lawful Permanent Resident.
3. According to the U.S. Department of Justice Immigration and Naturalization Service (INS) Claimant had undergone deportation proceedings that began in 1997 but his deportation had been suspended for reasons unclear.

4. On April 7, 2008, the INS issued Claimant an Order of Supervision (I-220B) which permits Claimant to move about the country while his deportation is pending.
5. Claimant applied for benefits including FAP.
6. The Department determined that Claimant was a “qualified alien” and then granted Claimant benefits including FAP and MA/AMP.¹
7. On April 16, 2012, the Department mailed Claimant a Redetermination Packet for FAP (DHS-1010).
8. The Department also mailed Claimant a Notice of Case Action (DHS-1605) which requested a copy of Claimant’s green card or alien status by April 23, 2012.
9. On April 23, 2012, the Department received Claimant’s Order of Supervision from INS, which indicated that Claimant may be deported and was currently under supervision.
10. On April 26, 2012, the Department received Claimant’s Redetermination Packet for FAP.
11. On May 3, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605), which indicated Claimant was not eligible for FAP because he is “not a citizen or eligible alien or has not provided proof of citizenship or immigration status.”
12. On May 14, 2012, the Department received a request for hearing (DHS-18), which was prepared by Claimant’s AHR, and indicated that he wanted his FAP, Adult Medical Program (AMP) and SDA cases reinstated and that he did not receive a notice of case action for termination of AMP and SDA cases.

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 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 Mich Admin Code, R 400.3001 through R 400.3015.

¹ The Department representatives who attended the hearing were unable to provide any verification or documents to support the Department’s initial finding that Claimant was a qualified alien.

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 1998-2000 AACRS R 400.3151-400.3180.

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 Adult Medical Program (AMP) is available to individuals who meet all the eligibility factors in BEM 640. Certain aliens are limited to coverage of emergency services (ESO). BEM 640.

For all programs, the Department is required to determine the alien status of each non-citizen requesting benefits at application, member addition, redetermination and when a change is reported. BEM 225. For FIP, FAP and SDA, if a group member is identified on the application as a U.S. citizen, the Department will not require verification unless the statement about citizenship is inconsistent, in conflict with known facts or is questionable. BEM 225. The following are not sufficient reasons to question citizenship: (1) general appearance of the applicant; (2) foreign accent; (3) inability to speak English; (4) employment as a migrant farmworker; (5) foreign-sounding name. BEM 225.

A person must be a U.S. citizen or have an acceptable alien status for the designated programs. BEM 225. Persons who do not meet this requirement, **or who refuse to indicate their status**, are disqualified. BEM 225.

For MA/AMP, citizenship/alien status is not an eligibility factor for emergency services only (ESO) MA. BEM 225. However, the person must meet all other eligibility factors, including residency; see BEM 220. BEM 225. To be eligible for full MA coverage a person must be a U.S. citizen or an alien admitted to the U.S. under a specific immigration status. BEM 225. U.S. citizenship must be verified with an acceptable document to continue to receive Medicaid; see BAM 130. BEM 225. A person claiming U.S. citizenship is not eligible for ESO coverage. BEM 225. The alien status of each non-citizen must be verified to be eligible for full MA coverage. BEM 225.

The Department must determine the alien status of each non-citizen requesting benefits at application, member addition, redetermination and when a change is reported. BEM 225 at p 1. A person must be a U.S. citizen or have an acceptable alien status for the designated programs. BEM 225, p 1. Persons who do not meet this requirement, or who refuse to indicate their status, are disqualified. BEM 225, p 1.

Persons listed under the program designations in Acceptable Status meet the requirement of citizenship/alien status. BEM 225, p 3. Eligibility may depend on

whether or not the person meets the definition of “Qualified Alien.” BEM 225, p 3. The definition of qualified alien includes specific alien statuses, but not all alien statuses. BEM 225, p 3. This definition is used in several of the acceptable alien statuses, in conjunction with other criteria. BEM 225, p 3. Not all acceptable alien statuses require that the person be a qualified alien. BEM 225, p 3.

BEM 225 defines a qualified alien as an alien who is: (1) lawfully admitted for permanent residence under the Immigration and Naturalization Act (INA); (2) granted asylum under section 208 of the INA; (3) a refugee who is admitted to the U.S. under section 207 of the INA;² (4) paroled into the U.S. under section 212(d)(5) of the INA for a period of at least one year; **(5) an alien whose deportation is being withheld under section 241(b)(3) or 243(h) of the INA;** (6) granted conditional entry pursuant to section 203(a)(7) of the INA; (7) a Cuban/Haitian entrant; or (8) an alien who has been battered or subjected to extreme cruelty in the U.S. by a U.S. citizen or legal permanent resident spouse or parent, or by a member of the spouse or parent’s family living in the same household, or is the parent or child of a battered person. BEM 225, p 3.

Under §241(b)(3) of the INA, the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C.S. § 1231(b)(3)(A). To qualify for withholding of removal, an alien bears the burden of showing a clear probability of persecution. The alien must, in other words, establish that it is more likely than not that he would be persecuted on account of a protected ground upon removal to that country. 8 C.F.R. § 208.16(b)(2).

Several federal statutes (including §243(h) of the INA) authorize the Attorney General, in his discretion, to grant asylum to an alien who demonstrates persecution or a well-founded fear of persecution on account of a political opinion, and they require the Attorney General to withhold deportation where the alien's life or freedom would be threatened for that reason. See also §§ 101(a)(42)(A), 208(a), (8 U.S.C.S. §§ 1101(a)(42), 1158(a), 1253(h)(1)) of the Immigration and Nationality Act, 8 U.S.C.S. § 1101 et seq. Under § 243(h)(2)(B) of the Immigration and Nationality Act relief from deportation is unavailable to aliens who, having been convicted of a particularly serious crime or constitute a danger to the community.

Here, Claimant, through his AHR, contends that the Department improperly closed his FAP, AMP and SDA due to his citizenship or alien status. For all programs the Department is required to ascertain Claimant’s status at redetermination per BEM 225. The Department contends that Claimant’s benefits were closed after he failed to produce proper documentation to show his citizenship or alien status. The Department contends that Claimant has not shown that he is a qualified alien under BEM 225. According to an officer from the US Immigration and Custom Enforcement (ICE), Claimant’s deportation was ordered due to an aggravated felony.

² This includes Iraqi and Afghan special immigrants.

During the hearing, Claimant admitted that during the course of ongoing conversations with the Department concerning the submission of proper documentation from INS, he told the Department he would no longer send them any documents. According to Claimant, he had already provided them with all relevant documents including the Order of Supervision. Claimant's representative testified that Claimant suffered from psychological problems. But Claimant's representative also argued that the Department erred because Claimant is a "qualified alien" as defined by BEM 225 because his deportation is being withheld under section 241(b)(3) and/or 243(h) of the INA. However, Claimant did not provide any evidence that the deportation was being withheld because "a clear probability of persecution" as defined by §241(b)(3) of the INA. Neither Claimant nor his representative specifically argued that he faces persecution on account of his political opinion or membership in a particular social group. Claimant also did not provide any evidence that the Attorney General refused to remove Claimant to Iraq because the Attorney General decided that his "life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion" as set forth in §243(h). In addition, the record in this matter shows that at one point Claimant actually refused to provide any additional documentation when requested by the Department. Despite having the opportunity to do so, Claimant did not go out of his way to provide the Department with sufficient documentation to find that he was a qualified alien such that he was entitled to continued benefits.

Based upon the material, substantial, competent evidence on the entire record, this Administrative Law Judge finds that the Department acted properly.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department acted properly when it closed Claimant's benefits and determined that Claimant failed to show that he is a citizen or eligible alien or has not provided proof of citizenship or immigration status under BEM 225.

Accordingly, the Department's AMP, FAP, MA and SDA decision is AFFIRMED.

IT IS SO ORDERED.

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

Date Signed: 6/29/12

Date Mailed: 6/29/12

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

CAP/ds

