

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201271233
Issue No.: 3025
Case No.: [REDACTED]
Hearing Date: October 18, 2012
County: Washtenaw DHS (20)

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 following Claimant's request for a hearing. After due notice, an in-person hearing was held on October 18, 2012 from Ypsilanti, Michigan. Participants included the above named claimant. Participants on behalf of Department of Human Services (DHS) included [REDACTED], Specialist, and [REDACTED], Manager.

ISSUE

The issue is whether DHS properly denied Claimant's application for Food Assistance Program (FAP) benefits based on the disqualification of group members related to citizenship issues.

FINDINGS OF FACT

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

1. On 8/6/12, Claimant applied for FAP benefits.
2. Claimant's FAP benefit group included Claimant and his spouse.
3. Claimant is a non-citizen with less than five years of verified ongoing residency in the United States.
4. Claimant has 40 Social Security credits.

5. On 8/6/12, DHS denied Claimant's FAP benefit application by finding that Claimant and his spouse were not eligible group members because they both failed to meet the citizenship/residency requirements for FAP benefits.
6. On 8/15/12 Claimant requested a hearing to dispute the FAP benefit denial.

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). DHS administers the FAP 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).

DHS regulations concerning citizenship and alien status requirements for FAP state, "A person must be a U.S. citizen or have an acceptable alien status for the designated programs." BEM 225 (1/2012), p. 1. The following persons are considered to have an acceptable alien status: born in Canada and at least 50% American Indian, member of American Indian tribe, qualified military alien, spouse or child of qualified military alien, refugee, asylee, Cuban/Haitian entrant, Amerasian, victim of trafficking, permanent resident alien with a class code of RE or AS or permanent resident alien with a class code other than RE, AM or AS whose United States entry occurred before 8/22/96. *Id.*, pp. 26-28.

BEM 225 also allows FAP eligibility for legal immigrants with a class code other than RE, AM or AS who entered the United States after 8/22/96 if any of the following: person has 40 countable Social Security credits, age 65 or older as of 8/22/96 and was residing in United States on 8/22/96, Hmong or Laotian (with other requirements), received SSI on 8/22/96, currently blind, currently disabled, under 18 years of age or longer in the U.S. for more than five years.

In the present case, DHS denied Claimant's FAP benefit application because Claimant's permanent residence card indicated that his date of entry in the United States was less than five years from his date of application. However, DHS quickly denied Claimant's application without considering any other ways that Claimant could meet the citizenship requirements for FAP benefits. As it happened, Claimant brought verification to the hearing that he has 40 SSA work credits. DHS agreed that Claimant has sufficient work credits to be exempt from the policy disqualifying Claimant's from receipt of FAP benefits. It is found that Claimant meets the citizenship requirements for FAP benefits because of his work history. Accordingly, the DHS application denial is improper.

DHS is to use the DHS-3503, Verification Checklist to request verification. BAM 130 (5-2012), p. 3. DHS must give clients at least ten days to submit verifications. *Id.* DHS

must tell the client what verification is required, how to obtain it, and the due date. *Id.* at 2.

It should be noted that DHS alleged that Claimant's spouse was an undocumented alien. Claimant denied that his wife was undocumented. It was not disputed that DHS made no efforts in allowing Claimant to verify his wife's residency status. The lack of allowance given to Claimant is a further basis for finding that the DHS actions were improper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly denied Claimant's application for FAP benefits. It is ordered that DHS:

- (1) reinstate Claimant's application dated 8/6/12;
- (2) process Claimant's application subject to the finding that Claimant verified that he has 40 SSA work credits;
- (3) process Claimant's application subject to the finding that DHS failed to give Claimant the opportunity to verify his wife's residency status; and
- (4) supplement Claimant for any benefits not issued as a result of the improper denial.

The actions taken by DHS are REVERSED.



Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 10/26/2012

Date Mailed: 10/26/2012

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

CG/hw

cc:

