

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

IN THE MATTER OF:

[REDACTED]

New Reg. No.: 201242108
Old Reg. No.: 201215669
Issue No: 2005, 3025
County DHS: [REDACTED]

Administrative Law Judge: Marya A. Nelson-Davis

RECONSIDERATION DECISION

In accordance with MCL 400.9, MCL 400.37, and Mich Admin Code, R 400.903, a hearing was held in this matter on [REDACTED]. Claimant, represented by counsel, appeared at hearing and provided testimony. The Department of Human Services (the Department) was represented by the Michigan Office of Attorney General; Department personnel testified at hearing.

ISSUE

In dispute was whether the Department properly denied Claimant's application for Medical Assistance (MA), Adult Medical Program (AMP), and Food Assistance Program (FAP) benefits.

FINDINGS OF FACT

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

1. Claimant, an immigrant from the Ukraine, arrived in the United States (U.S.) on [REDACTED]. (Department's Exhibit 3).
2. Claimant is not a U.S. Citizen, but became a permanent resident on [REDACTED] (Department's Exhibits 2, 3, 4, 5).
3. Claimant applied for MA, AMP, and FAP benefits on [REDACTED] for herself, her 24 year old son and her 73 year old father. (Department's Exhibit 3).
4. On [REDACTED], the Department denied Claimant's application for benefits for various reasons, including the lack of citizenship or eligible alien status. (Department's Exhibit 1).

5. Claimant then filed a request for hearing to contest the Department's actions. (Claimant's hearing request, received [REDACTED]).
6. On [REDACTED], Administrative Law Mark Meyer issued a Decision and Order which stated:

Based on the above findings of fact and conclusions of law, and for the reasons stated on the record, the Administrative Law Judge determines that the Department properly denied Claimant's application for MA and AMP benefits. To this extent, the agency's action is AFFIRMED.

It is further determined, however, that the Department improperly denied Claimant's application for FAP benefits. To this extent, the agency's action is REVERSED. Within 10 days of the mailing date of this decision and order, the Department IS ORDERED to perform the following:

In accordance with applicable law and policy, using all information available to the agency at the time of hearing, and not inconsistent with this decision and order, reprocess Claimant's application for FAP benefits, providing her with such benefits to which she is otherwise entitled.

7. On [REDACTED] claimant's representative filed a request for reconsideration requesting clarification on the following issues:
 - A. Whether the claimant's father is a "qualified alien", and therefore the agency denial of MA benefits for claimant's father was in error; and
 - B. Whether the claimant's son, as a derivative beneficiary of the approved battered spouse petition is a "qualified alien" in "acceptable status" for purposes of the FAP benefits.
8. On [REDACTED] Supervising Administrative Law Judge Marya A. Nelson-Davis issued an Order Granting Request for Reconsideration.

CONCLUSIONS OF LAW

The hearing and appeals process for applicants and recipients of public assistance in Michigan is governed by Mich Admin Code, R 400.901 through R 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).

A **reconsideration** is a paper review of the facts, law and any new evidence or legal arguments. It is granted when the original hearing record is adequate for purposes of judicial review and a rehearing is **not** necessary, but one of the parties believes the ALJ failed to accurately address all the relevant issues **raised in the hearing request**.

Rehearing/ Reconsideration Requests

All Programs

The department, client or authorized hearing representative may file a written request for rehearing/reconsideration. Request a rehearing/ reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing, and that could affect the outcome of the original hearing decision.
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion.
- Typographical, mathematical, or other obvious error in the hearing decision that affects the rights of the client.
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the client must specify all reasons for the request.

A written request made by the AHR or, if none, by the client, must be faxed to:

- (517) 335-6088- Attention: SOAHR Client Requested Rehearing/Reconsideration
- SOAHR (now MAHS) will not review any response filed to any rehearing/reconsideration requests.

A request must be received within 30 days of the date the hearing decision is mailed. The request must be received as follows:

- Department request -- received in SOAHR (MAHS).
- Client or authorized hearing representative request -- received anywhere in DHS.

Granting A Rehearing/ Reconsideration

All Programs

SOAHR (MAHS) will either grant or deny a rehearing/reconsideration request and will send written notice of the decision to all parties to the original hearing. SOAHR (MAHS) grants a rehearing/reconsideration request if:

- The information in the request justifies it; **and**
- **There is time to rehear/reconsider the case and implement the resulting decision within the standard of promptness; see STANDARDS OF PROMPTNESS in this item.**
- **If the client or authorized hearing representative made the request and it is impossible to meet the standard of promptness, the client or authorized hearing representative may waive the timeliness requirement in writing to allow the rehearing/reconsideration.**

All Programs

Pending a rehearing or reconsideration request, implement the original Decision and Order unless a circuit court or other court with jurisdiction issues an Order which requires a delay or stay.

If such an order is received by the client, SOAHR, the court or the Legal Affairs, or if there are questions about implementing the order; see Administrative Handbook manual Legal & FOIA Issues (AHN) item 1100, How to Obtain Legal Services. BEM, Item 600.

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.

Here, the Department denied Claimant's application for benefits under the MA program because she was "not blind, disabled, [aged], pregnant, parent/caretaker relative of a dependent child." (Department's exhibit 1). Benefits under the Adult Medical Program (AMP) were denied because that program was closed to new enrollees. Further, Claimant was denied FAP benefits based on a determination that she was not a U.S. citizen, nor did she fall within an acceptable alien status category for receipt of benefits. Claimant's request for hearing followed.

The notice of case action also indicates that claimant's son, A. K., was approved for Food Assistance Program benefits. Therefore there is no negative action in this instance. Upon reconsideration, there is no need to determine whether claimant's son, as a derivative beneficiary of the approved battered spouse petition is a qualified alien and in acceptable status for purposes of the FAP benefits.

The MA program was established by the Title XIX of the Social Security Act, 42 USC 1396, *et seq.*, and is implemented through federal regulations found in 42 CFR 430 *et seq.* The Department administers the MA program under MCL 400.10, *et seq.*, and MCL 400.105. Department policies developed from this authority are found in the BAM, BEM, and RFT.

The AMP was established under Title XIX of the Social Security Act, specifically 42 USC 1315. The Department administers the AMP under MCL 400.10, *et seq.*, and MCL 400.105. Department policies developed from the above authority are found in the BAM, the BEM, and the RFT.

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 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, BEM, and RFT. The goal of the FAP is to ensure sound nutrition among children and adults. BEM 230B, p1.

A person must be a U.S. citizen or have an acceptable alien status to receive MA, AMP, or FAP benefits. Persons who do not meet this requirement, or who refuse to indicate their status, are disqualified. BEM 225, pp 1, 2. Here, there was no dispute that Claimant was not a U.S. citizen. The primary question was whether she met one or more of the acceptable alien statuses found in BEM 225.

The alien status of each noncitizen requesting benefits must be determined at application, member addition, redetermination, and when a change is reported. BEM 225, p 1.

Persons listed under the program designations in "acceptable status" meet the requirement of citizenship/alien status. Eligibility may depend, however, on whether or not the person meets the definition of qualified alien. However, not all acceptable alien statuses require that the person be a qualified alien. BEM 225, p 3.

"Qualified alien" means an alien who is:

- Lawfully admitted for permanent residence under the INA¹.
- Granted asylum under section 208 of the INA.
- A refugee who is admitted to the U.S. under section 207 of the INA; this includes Iraqi and Afghan special immigrants.
- Paroled into the U.S. under section 212(d)(5) of the INA for a period of at least one year.

¹ Immigration and Nationality Act (INA), 8 USC 1101, *et seq.*

- An alien whose deportation is being withheld under section 241(b)(3) or 243(h) of the INA.
- Granted conditional entry pursuant to section 203(a)(7) of the INA.
- A Cuban/Haitian entrant.
- *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.

"Acceptable status" designations for all public assistance programs include the following:

- U.S. citizen
- Persons born in Canada who are at least 50 percent American Indian.
- Member of a federally-acknowledged American Indian tribe.
- Qualified military alien (i.e., a qualified alien on active duty in, or veteran honorably discharged from, the U.S. Armed Forces).
- Holder of one of the following immigration statuses:
 - Permanent resident alien with class code RE, AS, SI or SQ on the I-551 (former refugee or asylee).

Note: For FAP, a client who enters the U.S. with one of the following categories is eligible for the first seven years. If they adjust to another category which requires them to meet the five-year requirement, they are still eligible for the first seven years.
 - Refugee admitted under INA section 207.
 - Granted asylum under INA section 208.
- Cuban/Haitian entrant.

- Amerasian under P.L. 100-202 (class code AM on the I-551).
- Victim of trafficking.
- Alien whose deportation (removal) is being withheld under INA section 241(b)(3) or 243(h).
- For FIP, eligibility is limited to five years following the date of the withholding order unless the alien is a qualified military alien or the spouse or dependent child of a qualified military alien.

BEM 225, pp 3-6.

Specific "acceptable status" designations for MA and AMP include the following:

- Alien admitted into the U.S. with one of the following immigration statuses:
 - Permanent resident alien with a class code on the I-551 other than RE, AM or AS.
 - Alien paroled into the U.S. for at least one year under INA section 212(d)(5).

Exceptions to the above statuses: The eligibility of an alien admitted into the U.S. on or after August 22, 1996 with one of these statuses is restricted as follows unless the alien is a qualified military alien or the spouse or dependent child of a qualified military alien:

- For FIP, an individual is disqualified for the first five years in the U.S.
 - For SDA, an individual is disqualified.
 - For MA and AMP an individual is limited to emergency services for the first five years in the U.S.
- Alien granted conditional entry under INA section 203(a)(7).
 - Permanent resident alien with an I-151, Alien Registration Receipt Card.

BEM 225, p 6.

Specific "acceptable status" designations for MA, AMP, and FAP also include the following:

- An alien who has been battered or subjected to extreme cruelty in the U.S. or whose child or parent has been battered or subjected to extreme cruelty in the United States.

Exception: The eligibility of a battered alien admitted into the U.S. on or after August 22, 1996, is restricted as follows:

- For FIP, he is disqualified for the first five years in the U.S.
- For MA and AMP he is limited to emergency services for the first five years in the U.S. An alien is considered a battered alien if all of the following conditions are met:

- The USCIS or the Executive Office of Immigration Review (EOIR) has granted a petition or found that a pending petition sets forth a prima facie case that the alien is eligible for legal permanent residents status (LPR) by way of being one of the following:

- i. A spouse or child of a U.S. citizen or LPR.
 - ii. The widow or widower or a U.S. citizen to whom the alien had been married for at least two years before the citizen's death.
 - iii. A battered alien, or the alien parent of a battered child, or the alien child of a battered parent.
- The abuse was committed by the alien's spouse or parent, or by a member of the spouse or parent's family residing in the same household as the alien, and the spouse or parent consented to or acquiesced in such battery or cruelty (and if the victim was the alien's child, the alien did not participate in or condone the abuse).
 - There is a substantial connection between the battery or extreme cruelty and the need for assistance.
 - The battered alien, child, or parent no longer lives in the same household as the abuser.

BEM 225, pp 6-7.

An "acceptable status" specific to the FAP includes:

- A person who has lived in the U.S. as a qualified alien for at least five years since their date of entry.

BEM 225, pp 8-9.

A person is lawfully residing in the U.S. if he or she meets (or met) one of the following criteria:

- *Is a qualified alien.*
 - Has been inspected and admitted to the U.S. and has not violated the terms of the status under which he was admitted or to which he has changed after admission.
 - Has been paroled into the U.S. pursuant to section 212(d)(5) of the INA for less than one year or was either:
 - Paroled for deferred inspection or pending exclusion proceedings under 236(a) of the INA.
 - Paroled into the U.S. for prosecution under 8 CFR 212.5(a)(3).
 - Is in temporary resident status under section 210 or 245A of the INA.
 - Is under temporary protected status under section 244A of the INA.
 - Is a family unity beneficiary under section 301 of P.L. 101-649, as amended.
 - Is under deferred enforced departure pursuant to a decision made by the President of the United States.
 - Is in deferred action status pursuant to service operations instructions at OI 242.1(a)(22).
 - Is the spouse or child of a U.S. citizen whose visa petition has been approved and who has a pending application for adjustment of status.
 - Is an applicant for asylum under section 208)(a) of the INA.
 - Is an applicant for withholding of deportation under section 243(h) of the INA who has been granted employment authorization.
 - Is an applicant for asylum or withholding of deportation who is under the age of 14 and has had an application pending for at least 180 days.

BEM 225, pp 9-10.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine.

Dep't of Community Health, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Claimant argues that the department's denial of MA benefits for claimant's father was in error. There is no denial of Medical Assistance benefits for claimant's father [REDACTED], contained in the notice of case action. According to the application, claimant's father was born [REDACTED]. There is insufficient evidence contained in the record as to whether he is a qualified Alien and therefore eligible to receive Medical Assistance benefits.

Age criteria exist for the Aged SSI-Related Persons (BEM 155, 156, 163, 164, and 166): The individual must be age 65 or older. BEM 240, page 3. Citizenship/alien status is not an eligibility factor for emergency services only (ESO) MA. However, the person must meet all other eligibility factors, including residency; see BEM 220.

- 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.
- U.S. citizenship must be verified with an acceptable document to continue to receive Medicaid; see BAM 130.
- A person claiming U.S. citizenship is not eligible for ESO coverage.

The alien status of each non-citizen must be verified to be eligible for full MA coverage; see CITIZENSHIP/ALIEN STATUS in this item. BEM, item 225, page 2.

Testimony at the hearing indicates that claimant's father [REDACTED] is not a United States citizen and there was no documentation provided by claimant that her father was a qualified alien for purposes of Medical Assistance benefit eligibility. Claimant's representative admits that claimant's father entered the United States less than five years ago. For MA and AMP he is limited to emergency services for the first five years *in* the U.S. Claimant has provided no documentation that her father is a qualified alien who is eligible to receive Medical Assistance benefits despite his aged status.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, and for the reasons stated on the record, the Administrative Law Judge determines that the Department properly denied Claimant's father's application for MA and AMP benefits.

Upon reconsideration, claimant's father has been in the United States less than five years and is limited to emergency services **only** for the first five years in the United States. [REDACTED] is not eligible to receive MA or AMP under the circumstances.

Claimant's son was approved for FAP benefits and there was no negative action in his case. Upon reconsideration, there is no need to determine whether claimant's son, as a derivative beneficiary of the approved battered spouse petition is a qualified alien and in acceptable status for purposes of the FAP benefits.

Accordingly, the department's actions are **AFFIRMED**.

/s/
Marya A. Nelson-Davis
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 04/01/2013

Date Mailed: 04/02/2013

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, however, order a rehearing or reconsideration on the Department of Human Services' motion where the final decision cannot be implemented within 90 days 60 days of the filing of the original request.

Claimant may appeal this 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 errors, or other obvious errors in the hearing decision that affect the substantial rights of Claimant;
 - The failure of the ALJ to address other relevant issues in the hearing decision.

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Request must be submitted through the local DHS office or directly to MAHS by mail at:

Michigan Administrative Hearings System
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

MAND/jk

cc:

