

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2012496
Issue No: 3016
Case No: [REDACTED]
Hearing Date: October 26, 2011
SSPC West District #98

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 upon the DHS client's (referred to as "the claimant") request for a hearing received on September 19, 2011. After due notice, a telephone hearing was held on October 26, 2011. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly deny the claimant's application for Food Assistance Program (FAP) benefits based on his 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. The claimant applied for FAP benefits on July 21, 2011. (Hearing Summary).
2. On his application, the claimant indicated that he was in school "full time." (Department Exhibit 12).
3. On July 21, 2011, the claimant indicated during an interview with the Department that he was a student attending [REDACTED] studying Business Administration. The claimant also indicated that he lost his job as a cook at [REDACTED].
4. On July 27, 2011, the Department verified that the claimant's last day of employment at [REDACTED] was June 25, 2011.
5. On August 19, 2011, the Department mailed the claimant a Notice of Case Action (DHS-1605) denying his FAP application due to student status.

6. On September 19, 2011, the claimant submitted a hearing request contesting the denial of his application for FAP benefits. (Request for a Hearing).

CONCLUSIONS OF LAW

The client has the right to request a hearing for any action, failure to act or undue delay by the department. BAM 105. The department provides an administrative hearing to review the decision and determine its appropriateness. BAM 600.

The regulations that govern the hearing and appeal process for applicants and recipients of public assistance in Michigan are contained in the Michigan Administrative Code (Mich Admin Code) Rules 400.901 through 400.951. An opportunity for a hearing shall be granted to a recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. Mich Admin Code 400.903(1).

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 of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. The department's policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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

In order for a person in student status to be eligible for FAP benefits, they 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.

- 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.

Here, the claimant does not meet the eligibility criteria at the time that the Department denied his application for FAP benefits due to his student status. During the hearing, Claimant testified that he was not a student. Although the claimant's application indicated he was a student and that he verbally informed the Department that he was a student, the claimant stated that he "registered as a student at [REDACTED], but never enrolled." The claimant is a student attending attends [REDACTED]. However, the information provided to the Department at the time of application was that the claimant was, in fact, a student enrolled at [REDACTED]. The claimant could have easily indicated in the application that he was not enrolled as a student, but he failed to do so. The Department had no reason to believe that the claimant was not a student at the time. As a student, the claimant is not eligible for FAP benefits. The claimant does not receive FIP benefits. He is not enrolled in an institution of higher education as a result of participation in (1) approved employment related activities, (2) a JTPA program, (3) a program under Section 236 of the Trade Readjustment Act of 1974, or (4) any other State or local government employment and training program. The claimant is not employed and is neither physically nor mentally unfit for employment. The claimant is not self-employed nor did he provide evidence that he was actively participating in an on-the-job training program at the time of application. (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.) There was also no evidence that the claimant was participating in a state or federally-funded work study program at the time of application.

This Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, the department acted in accordance with the applicable policy in denying the claimant's application for FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department acted in accordance with policy in denying the claimant's FAP application.

Accordingly, the department is AFFIRMED.

It is SO ORDERED.

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

Date Signed: 10/28/11

Date Mailed: 10/28/11

NOTICE: Administrative Hearings 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. Administrative Hearings 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.

CAP/ds

