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

IN THE MATTER OF: Reg. No: 2013-11243

Issue No: <u>3016</u>

Case No: Hearing Date: January 8, 2013

Oakland-03 County DHS

ADMINISTRATIVE LAW JUDGE: Corey A. Arendt

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claim ant's request for a hearing. After due notice, a telephone hearing was held on January 8, 2013 from Lans ing, Michigan. Participant s on behalf of Claimant in cluded Participants on behalf of the De partment of Human Services (Department) included and Participants and Participants on behalf of the Department of Human Services (Department) included

<u>ISSUE</u>

Whether the Department properly closed t he Claim ant's Food Assistanc e Program (FAP) case due to Claimant's student status?

FINDINGS OF FACT

I find as material fact, based upon the competent, material and substantial evidence on the whole record:

- 1. As of November 5, 2012, the Claimant was enrolled more than part-time in an educational institution.
- As of November 5, 2012, the Claimant was working approximately 12 hours a week.
- On November 5, 2012, the Department sent the Claimant a notice of case action. The notice indicated the Department was closing the Claimant's FAP case due to his student status effective December 1, 2012.
- On December 1, 2012, the Departm ent closed the Claimant's F AP case due to his student status.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An oppor tunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. (MAC R 400.903(1)).

Clients have the right to contest a Departm ent decis ion affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The Department will provide an administrative hearing to rev iew the decision and determine the appropriateness of that decision. (BAM 600).

The FAP (formerly known as the Food Stam p (FS) program) was established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in T itle 7 of t he Code of Federal Regulations (CF R). The Department administers the FAP program pursuant to MCL 400.10, et seq., and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Effective April 1, 2011, client s in student status are no lon ger eligible to receive F AP benefits based solely on an approved education plan. BEM 245. A person is in student status if the person is 18 through 49 years old and enrolled half-time or more in: (i) a vocational, trade, business, or technical s chool that normally requires a high school l diploma or an equivalency cer tificate; or (ii) a regular curriculum at a college or university that offers degree programs regard less of whether a diploma is required. (BEM 245).

In order for an individual in student status to be eligible for FAP benefits, the individual must meet one of the following criteria:

- Receiving Family Independence Program benefits.
- Enrolled in an instituti on of higher educat ion as a result of participation in:
 - Approved employment -related activities.
 - A JTPA program.
 - •• A program under Sect ion 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-thejob 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 f ull or in part under Title IV-C of the Higher Education Ac t of 1965, as amended) during the regular school y ear. 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, whichev er is later.
 - Continues until the end of the month in which the school term ends, or when you bec ome aware that the student has refused a workstudy assignment.
 - •• Remains between ter ms or semesters when the break is less than a full m onth, 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 clas s 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 fu II-time in an in stitution of higher education who cares for a dependent under age 12. This includes a per son 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 st atus while attending classes regularly. Student status cont inues during official s chool vacations and periods of extended illness. Student status does not continue if the st udent is suspended or does not intend to register for the next school term (excluding summer term). (BEM 245).

Testimony and other evidence must be we ighed and considered according to its reasonableness. Moreover, the weight and credibi lity of this evidence is generally for the fact-finder to determine. In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness is testimony, and the interest, if any, the witness may have in the outcome of the matter.

I have carefully considered and weighed the testimony and other evidence in the record and find the Claimant did not meet a single ex ception to the student status policy an d therefore the Department acted appropriately in closing the Claimant's FAP case.

DECISION AND ORDER

I find, based upon the above findings of fact and conclus ions of law, decide the Department acted in accordance with policy in determining Claimant was not eligible for FAP benefits due to student status.

The Department's actions are **AFFIRMED**.

Corey A. Arendt
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: January 9, 2013

Date Mailed: January 9, 2013

¹ 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).

² Dep't of Community Health, 274 Mich App at 372; People v Terry, 224 Mich App 447, 452; 569 NW2d 641 (1997).

³ People v Wade, 303 Mich 303 (1942), cert den, 318 US 783 (1943).

NOTICE: Administrative Hearings may or der 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 Hear ings will not orde rarehearing 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 ti mely 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 <u>MAY</u> be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration <u>MAY</u> be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical erro r, 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

CAA/las

