

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 2013-27379
Issue No: 3008
Case No: [REDACTED]
Hearing Date: March 12, 2013
Wayne-55 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 Claimant's request for a hearing. After due notice, a telephone hearing was held on March 12, 2013 from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED] [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED] and [REDACTED] [REDACTED].

ISSUE

Whether the Department properly closed the Claimant's Food Assistance Program (FAP) benefits due to a criminal justice disqualification?

FINDINGS OF FACT

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

1. As of December 31, 2012, the Claimant was receiving FAP benefits.
2. On January 14, 2013, the Department sent the Claimant a notice of case action. The notice indicated the Claimant's FAP benefits were being closed effective January 14, 2013 due to a criminal justice disqualification.
3. On January 28, 2013, the Claimant requested a hearing.
4. At no point in time in December 2012 or January 2013 was the Claimant a fugitive felon, probation violator or parole violator.

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 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 1999 AC, R 400.3001 through Rule 400.3015.

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 opportunity 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 department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

People convicted of certain crimes, fugitive felons, and probation or parole violators are not eligible for assistance. (BEM 203).

Testimony and other evidence must be weighed and considered according to its reasonableness.¹ Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine.² In evaluating the credibility and weight to be given to the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter.³

Furthermore, in contested cases, the rules of evidence as applied in nonjury civil cases in circuit court should be applied. But an agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. 1969 PA 306, MCL 24.275. Public Act 306 of 1969 section 24.275.

The evidence the Department relies upon is a written statement from a Ms. Robin Thomas. Ms. Thomas did not appear at the hearing and no one had an opportunity to question Ms. Thomas regarding the writings found in the document. The document could not be authenticated nor could it be wholly questioned. Furthermore, the document did not identify specifically what made the Claimant ineligible and did not indicate the precise time frame. It only indicated that as of March 8, 2013 the Claimant was ineligible. It never addressed the earlier time period of January 14, 2013 when the Department took the action to close the Claimant's FAP case.

Because the Department failed to provide any evidence of the Claimant meeting one of the disqualification criteria, I am reversing the Department in this matter.

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).

DECISION AND ORDER

I find, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Department did not act properly.

Accordingly, the Department's FAP decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Initiate a redetermination as to the Claimant's eligibility for FAP benefits beginning January 14, 2013 and issue retroactive benefits if otherwise eligible and qualified.

/s/

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

Date Signed: March 13, 2013

Date Mailed: March 13, 2013

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 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

2013-27379/CAA

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

cc:

