

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201338614
Issue No.: 3025
Case No.: [REDACTED]
Hearing Date: April 29, 2013
County: Wayne (31)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 April 29, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of Department of Human Services (Department) included [REDACTED], Eligibility Specialist, and [REDACTED], Family Independence Specialist acting as translator.

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) case based on Claimant's failure to establish an eligible alien status?

FINDINGS OF FACT

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

1. Claimant was an ongoing recipient of Food Assistance Program (FAP) benefits.
2. In connection with his March 2013 FAP redetermination, the Department concluded that Claimant had failed to establish his ongoing eligibility for FAP benefits.
3. On March 18, 2013, the Department sent Claimant a Notice of Case Action, notifying him that effective April 1, 2013, his FAP case would close because he was not a citizen or eligible alien, or had failed to provide proof of citizenship or immigration status.

4. On March 25, 2013, Claimant filed a hearing request, protesting the Department's actions.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), the Department of Human Services Reference Forms and Publications Manual (RFF), and Department of Human Services Reference Tables Manual (RFT).

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

In connection with a March 2013 FAP redetermination, the Department concluded that Claimant was improperly receiving FAP benefits. In a Notice of Case Action dated March 18, 2013, the Department notified Claimant that effective April 1, 2013 his FAP case would close because he was not a citizen or eligible alien, or had failed to provide verification of his eligibility.

The Department must determine the alien status of each non-citizen requesting benefits at application, member addition, redetermination, and when a change is reported. BEM 225 (January 1, 2012), p 1. To receive FAP benefits, a person must be a U.S. citizen or have an acceptable alien status, and individuals who do not meet this requirement are disqualified from FAP eligibility. BEM 225, p 1. The alien status of each non-citizen requesting benefits **MUST** be verified. BEM 225, p 16.

In this case, Claimant credibly testified that he was a Cuban-born individual who entered the U.S. in [REDACTED]. The only documentation he provided to the Department concerning his alien status was (i) his birth certificate showing he was born in Cuba and (ii) an Order of Supervision and Addendum dated [REDACTED], which states that on [REDACTED] Claimant was ordered excluded or deported pursuant to proceedings commenced prior to [REDACTED], but because the Immigration and Naturalization Service (INS) was unable to affect his deportation or removal, he is permitted to be at large under a several conditions, including reporting to INS in person on scheduled dates and reporting any out-of-state travel. The order is signed by an INS official. The evidence also established that Claimant is disabled and receiving Supplemental Security Income (SSI) from SSA.

Based on the evidence presented, Claimant could establish "acceptable alien" status for FAP purposes if he could verify that he (i) lawfully resided in the U.S. and was currently disabled; (ii) held an immigration status of Cuban/Haitian entrant; or (iii) was an alien whose deportation was being withheld under Section 241(b)(3) or 243(h) of the

Immigration and Nationality Act (INA). BEM 225, pp 5-6; 8-9. While Claimant, as an SSI recipient, falls within the definition of currently disabled, to establish that he was “lawfully residing in the U.S.,” he would have to verify that his status as a Cuban/Haitian entrant or an alien whose deportation was being withheld under Section 241(b)(3) or 243(h). BEM 225, pp 3, 8, 9. Cuban and Haitian Entrant is defined as follows:

- (1) an individual granted parole status as a Cuban/Haitian Entrant (Status Pending) or granted any other special status subsequently established under the immigration laws for nations of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and
- (2) any other national of Cuba or Haiti—
 - (A) who—
 - (i) was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;
 - (ii) is the subject of removal proceedings under the Immigration and Nationality Act; or
 - (iii) has an application for asylum pending with the Immigration and Naturalization Service; and
 - (B) with respect to whom a final, nonappealable, and legally enforceable order of removal has not been entered.

Refugee Education Assistance Act of 1980, as amended, § 501(e)(1), 8 U.S.C. § 1522 note 8; See also 7 CFR 273.4(a)(6)(i)(H) and (ii)(E).

Cuban/Haitian Entrant status is verified through either

- an I-94 Arrival/Departure Record indicating admission into the US from Cuba or Haiti, annotated with “Cuban/Haitian entrant (Status Pendins),” “parole,” “212(d)(5)” or “Form I-598 Filed” or
- an I-94 Arrival/Departure Record indicating admission into the U.S. from Cuba or Haiti **and** letter or notice from the United States Citizenship and Immigration Services (USCIS) indicating ongoing (not final) deportation, exclusion or removal proceedings.

BEM 225, p 23 (emphasis added). See also BEM 225, p 29; RFF 94-I.

Status as an alien whose deportation (removal) is being withheld under INA Section 241(b)(3) or 243(h) is verified through a court order or a letter from an immigration judge stating that deportation (removal) is withheld per INA section 241(b)(3) or 243(h). BEM 225, pp 6, 23.

Alien status may also be verified through either of the following:

- a G-641 annotated at the bottom by a United States Citizenship and Immigration Services (USCIS) representative (although it appears that the correct form is

currently the G-845; see <http://www.uscis.gov/portal/site/uscis/menuitem>). The G-845 form contemplates completion by agencies.

- information from the USCIS Records Section, 333 Mt. Elliott, Detroit, Michigan 48207.

BEM 225, p 23.

The documentation Claimant presented to the Department did not verify his status as “acceptable alien” under BEM 225 as either a Cuban/Haitian Entrant or an alien whose deportation is being withheld under Section 241(b)(3) or 243(h) of the INA. Thus, the Department properly concluded that the verification submitted by Claimant was not sufficient to establish his FAP eligibility.

However, although the Department must disqualify any person under the FAP program who is unable to obtain verification or refuses to cooperate in obtaining it, the Department must tell the client what verification is required, how to obtain it, and the due date. BEM 225, p 17; BAM 130 (May 2012), pp 2-3. Furthermore, although the client must obtain the required verification, the Department must assist the client if he needs and requests help. BAM 130, p 3. In this case, there was no evidence presented that the Department advised Claimant prior to his case closure what verification he was required to submit. Furthermore, the only Verification Checklist sent to Claimant, which was sent on April 2, 2013, after his April 1, 2013 FAP case closure, did not specify what requested proofs he was required to submit to establish acceptable alien status. Because the Department did not specify what verifications were required from Claimant prior to the case closure, the Department did not act in accordance with Department policy when it closed Claimant’s FAP case for failure to verify alien status.

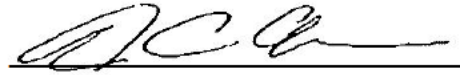
DECISION AND ORDER

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, the Administrative Law Judge concludes that the Department did not act in accordance with Department policy when it closed Claimant’s FAP case. Accordingly, the Department’s 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. Reinstate Claimant's FAP case as of April 1, 2013;
2. Begin reprocessing Claimant’s March 2013 FAP redetermination in accordance with Department policy, requesting from Claimant any required verification of alien status to determine his FAP eligibility consistent with this Hearing Decision;
3. Issue supplements to Claimant for any FAP benefits he is eligible to receive but did not from April 1, 2013, ongoing; and

4. Notify Claimant in writing of its decision in accordance with Department policy.



Alice C. Elkin
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 5/7/2013

Date Mailed: 5/7/2013

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

ACE/hw

cc:

