

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-49775
Issue No.: 3025
Case No.: [REDACTED]
Hearing Date: June 27, 2013
County: DHS-SSPC-WEST

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 June 27, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly close the Claimant's Food Assistance Program (FAP) case?

FINDINGS OF FACT

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

1. As of April 22, 2013, the Claimant received FAP benefits.
2. On April 23, 2013, the Department closed Claimant's case due to the Claimant being an ineligible citizen.
3. On May 13, 2013, the Department sent the Claimant a notice of the closure.
4. On or around May 23, 2013, Claimant filed a hearing request, protesting the closure of the case.
5. On or around October 27, 2008, the Claimant obtained a permanent resident I-551 card coded c-1.

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 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 1999 AC, Rule 400.3001 through Rule 400.3015.

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. A person must be a U.S. citizen or have an acceptable alien status to receive FAP benefits. BEM 225.

The definition of qualified alien includes specific alien statuses, but **not** all alien statuses.

Qualified alien means an alien who is:

- Lawfully admitted for permanent residence under the INA.
- 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.
- 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.

Based on the evidence and testimony submitted, I do not find the Claimant to meet a qualified alien status.

Acceptable statuses for FAP purposes include:

- U.S. citizen (including persons born in Puerto Rico).
- Persons born in Canada who are at least 50 percent American Indian.
- Member of a federally acknowledged American Indian tribe.
- Qualified military alien--a qualified alien on active duty in, or veteran honorably discharged from, the U.S. armed forces.
- A qualified alien spouse and unmarried qualified alien dependent child of a qualified military alien.

- An alien who has been battered or subjected to extreme cruelty in the United States or whose child or parent has been battered or subjected to extreme cruelty in the United States.
- Permanent resident alien (regardless of class code) meeting the Social Security Credits (SSC) requirement; see “SOCIAL SECURITY CREDITS in this item.
- A qualified alien who was lawfully residing in the U.S. on August 22, 1996, and was 65 years of age or older on August 22, 1996.
- A person who is lawfully residing in the U.S. and was a member of a Hmong or Highland Laotian tribe at the time that the tribe assisted U.S. personnel by taking part in a military or rescue operation during the Vietnam era beginning August 5, 1964, and ending May 7, 1975.
- A person lawfully residing in the U.S. and disabled now.
- Persons who have lived in the U.S. as a qualified alien for at least five years since their date of entry.
- A qualified alien who is under 18 years of age.
- 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).
 - 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 under P.L. 106-386 of 2000; see VICTIMS OF TRAFFICKING in this item.
 - Alien whose deportation (removal) is being withheld under INA Section 241(b)(3) or 243(h).

After review of the testimony and evidence presented, I only see one area where the Claimant may be eligible for FAP benefits. That area has to deal with the immigration status of the Claimant. To determine the immigration status, the Department looked at and reviewed the Claimant's I-551 Permanent Resident Card.

The I-551, Permanent Resident Card, is issued by the U.S. Citizenship and Immigration Services (USCIS) when an alien has been lawfully admitted for permanent residence. It serves as a control document, an identification card, and as proof of alien registration. RFF 551.

During the hearing, the Department indicated the Claimant's class code was c-1. However, the evidence presented at the hearing does not clearly indicate the Claimant's classification code. The American eagle seal covers the category marking. Additionally, a c-1 status is associated with aliens in transit and typically have a 29 day transitional duration period attached to it. In this case, the expiration date is easily identifiable as December 4, 2018. The c-1 alleged by the Department and the 10 year duration period do not coincide.

The Department is encouraged to use RFF-551 to determine the category/class code of the I-551. Additionally, the testimony indicated there were some questions regarding the length of time the Claimant has been in the United States. The Department again is encouraged to try to clear up this confusion.

Based upon the above findings of fact and conclusions of law, I was unable to determine whether or not the Department's actions were appropriate, as the Department was acting with the understanding that the Claimant had a c-1 class code. Compounding matters I was unable to determine the proper coding as the copies provided by the Department of the I-551 were not very clear.

Therefore, I am reversing the Department in this matter.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that 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 April 23, 2013 and issue retroactive benefits if otherwise eligible and qualified.



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

Date Signed: June 28, 2013

Date Mailed: June 28, 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 affect the substantial rights of the claimant,
 - 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

cc:

