

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201312270
Issue No: 1033, 2005, 6019
Case No: [REDACTED]
Hearing Date: April 17, 2013
County: Ingham County DHS

ADMINISTRATIVE LAW JUDGE: **Suzanne D. Sonneborn**

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing received by the Department of Human Services (department) on November 12, 2012. After due notice, a telephone hearing was held on April 17, 2013 at which Claimant appeared and provided testimony. Claimant's wife, [REDACTED], also appeared and provided testimony on Claimant's behalf. The department was represented by [REDACTED], an eligibility specialist, and [REDACTED], a family independence manager, both with the department's Ingham County office.

ISSUE

Whether the department properly determined Claimant's eligibility for the Medical Assistance (MA) program, the Family Independence Program (FIP), and the Child Development and Care (CDC) program?

FINDINGS OF FACT

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

1. On October 29, 2012, Claimant applied for MA, FIP, CDC and Food Assistance Program (FAP) benefits for himself, his, wife, and their minor child. In his application, Claimant reported that he and his wife are not U.S. citizens and Claimant provided documentation establishing that they are in the country pursuant to student visas. Claimant also provided verification of his wife's monthly earned income in the amount of \$1,583.00. (Department Exhibits 2, 3, 4, 5, 6, 11)
2. On November 1, 2012, the department mailed Claimant a Notice of Case Action (DHS 1605) advising him that his application for MA and FIP

benefits had been denied due to ineligibility because Claimant failed to meet alien status Michigan residency requirements. The department further advised Claimant that his application for CDC benefits had been denied because the parent does not have a need for child day care services due to employment, education or family preservation reasons and because Claimant's household's gross income exceeds the limit for the program. (Department Exhibits 1, 8)

3. On November 13, 2012, Claimant submitted a hearing request protesting the denial of his application for MA, FIP, and CDC benefits. (Request for a Hearing)
4. On April 17, 2013, Claimant provided the department with a copy of his Employment Authorization Card issued by the U.S. Customs and Immigration Services on November 20, 2012. The Employment Authorization Card expires in 2016. (Department Exhibit 11)

CONCLUSIONS OF LAW

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 1. The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. Mich Admin Code R 400.903(1).

The Medical Assistance (MA) program was established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The department administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, *et seq.* The department administers the FIP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3101-3131.

The Child Development and Care (CDC) program was established by Titles IVA, IVE, and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The department provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies for all three programs are

found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

A person must be a U.S. citizen or have an acceptable alien status for the FIP, FAP, and CDC programs. BEM 225. Persons who do not meet this requirement, or who refuse to indicate their status, are disqualified. BEM 225. Non-immigrants (for example, students, tourists) and undocumented non-citizens are **not** eligible for FIP, CDC, or FAP benefits. BEM 225. A non-immigrant temporarily enters the U.S. for a specific purpose such as business, study, temporary employment, or pleasure. When a person is admitted to the United States a USCIS official will assign a non-immigrant category according to the purpose of the visit. BEM 225.

However, others living with a person disqualified by this requirement can qualify for program benefits – but, the disqualified person's assets and income might have to be considered based on the program(s) requested. BEM 225. Moreover, for the CDC program, the department shall only determine the alien status of each child for whom care is requested, not other family members. BEM 225. Each child receiving day care paid through CDC must be a U.S. citizen or have an acceptable alien status.

To be eligible for full MA coverage, a person must be a U.S. citizen or an alien admitted to the U.S. under a specific immigration status. BEM 225. U.S. citizenship must be verified with an acceptable document to continue to receive Medicaid. BAM 130. Citizenship/alien status is not an eligibility factor for emergency services only (ESO) MA. However, the person must meet all other eligibility factors, including residency. BEM 225, BEM 220.

Moreover, to be eligible for all programs, a person must also be a Michigan resident. BEM 220. For purposes of the CDC and FAP programs, a person is considered a resident while living in Michigan for any purpose other than a vacation, even if there is no intent to remain in the state permanently or indefinitely. BEM 220. For purposes of the FIP program, the department must accept an individual's statement of intent to remain in Michigan unless the statement is inconsistent or conflicts with known facts. BEM 220. For purposes of the MA program, department policy provides that an individual is a Michigan resident if either of the following apply:

- The individual lives in Michigan, except for a temporary absence, **and** intends to remain in Michigan permanently or indefinitely. If the individual indicates an intent to remain in Michigan, but his or her official U.S. Citizenship and Immigration Services (USCIS) documents indicate a **temporary or time-limited period** to the visit, the individual does **not** meet the intent to remain requirements, unless he or she verifies that official steps are being taken with USCIS to apply for lawful permanent resident status. BEM 225. (Emphasis in original).

- The individual or a member of his or her MA fiscal group has entered the state of Michigan for employment purposes, and has a job commitment, or is seeking employment. BEM 220.

An individual who claims that he or a member of his MA fiscal group has entered the state for employment purposes must verify that he has a job commitment or is seeking employment. If the official USCIS documents indicate a status that does not permit the individual to work, the USCIS documents are verification that the individual did not enter Michigan for purposes of employment. BEM 200. When an adult in the MA fiscal group does not meet the residency requirement for eligibility, their children cannot meet the requirement either. BEM 220.

Finally, the department determines a client's eligibility for CDC benefits based on the client's household's actual income and/or prospective income. All earned and unearned income available to the client is countable. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMP), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. BEM 500.

In this case, at the April 17, 2013 hearing, the department representative testified that, because Claimant's minor child is a U.S. citizen and living in Michigan, the child would qualify for CDC benefits if Claimant's household meets the income and need eligibility requirements of the program. The department representative further testified that the department processed Claimant's application for CDC benefits and concluded that he exceed the income limit of \$1,990.00 for CDC benefits based on Claimant's wife's monthly earned income amount of \$1,583.00 and Claimant's monthly receipt of a stipend in the amount of \$2,000.00. However, the department representative acknowledged that she lacked current verification that Claimant in fact still received the \$2,000.00 monthly stipend and that she relied on an old letter in Claimant's file for such verification.

Regarding the FIP and MA programs, the department's representative testified that the department concluded that Claimant did not meet the "intent to remain" in Michigan residency requirement of BEM 200 because the visas issued to Claimant and his wife indicate a temporary or time-limited period. The department representative further acknowledged, however, that the department did not seek any verification from Claimant that he had taken official steps with USCIS to apply for lawful permanent resident status.

Claimant testified at the hearing that he and his wife are not U.S. citizens and that they are in the country and in Michigan to complete graduate and/or post-graduate work at

Michigan State University. Claimant further acknowledged and the department provided supporting documentation that the USCIS issued Claimant and his wife J-1 student visas on July 24, 2012 and that these visas expire on July 21, 2017, thus indicating a temporary or time-limited period. Claimant further testified that, in May 2012, Claimant applied with the USCIS for lawful permanent resident status and that this application was pending at the time of his October 29, 2012 application for FIP and MA benefits (but was since denied on November 4, 2012). Claimant further testified that he had also applied with the USCIS for an Employment Authorization Card, seeking authorization to work in Michigan and that this application was also pending at the time of his October 29, 2012 application for FIP and MA benefits – and was since granted and, on November 20, 2012, the USCIS issued him an Employment Authorization Card, authorizing him to work in this country for four years. Claimant further testified that, while his wife receives monthly earned income in the amount of \$1,583.00, he was not receiving any unearned income or stipend at the time that he applied for CDC benefits.

Testimony and other evidence must be weighed and considered according to its reasonableness. *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). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds that, based on the competent, material, and substantial evidence presented during the April 17, 2013 hearing, because Claimant's and Claimant's wife's official USCIS documents indicate a temporary or time-limited period for their stay in Michigan, the department acted in accordance with policy in determining that Claimant did not meet the alien status Michigan residency requirements and the department properly denied Claimant's application for MA and FIP benefits for the benefit periods of October 1, 2012 and November 16, 2012, respectively. This Administrative Law Judge further finds that, because the department lacked sufficient verification that Claimant exceeded the income limit for the CDC program, the department, the department did not act in accordance with policy in denying Claimant's application for CDC benefits for the benefit period effective October 21, 2012.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly denied Claimant's October 29, 2012 application for MA and FIP benefits because Claimant failed to meet alien status Michigan residency requirements. Accordingly, the department's actions in this regard are **UPHELD**.

The Administrative Law Judge further decides that the department improperly denied Claimant's October 29, 2012 application for CDC benefits for the benefit period effective

October 21, 2012. Accordingly, the department's actions in this regard are **REVERSED** and the department is ordered to immediately reinstate and reprocess Claimant's October 21, 2012 application for CDC benefits, including but not limited to obtained all necessary verifications pursuant to policy to determine Claimant's eligibility for the program and issue supplement checks for any months he did not receive the correct amount of benefits if he was otherwise entitled to them.

IT IS SO ORDERED.

/s/_____

Suzanne D. Sonneborn
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: April 19, 2013

Date Mailed: April 22, 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.

The Claimant may appeal this 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 errors, or other obvious errors in the hearing decision that affect the substantial rights of Claimant;
 - The failure of the ALJ to address other relevant issues in the hearing decision.

201312270/SDS

A request for a rehearing or reconsideration must be submitted through the local DHS office or directly to MAHS by mail at:

Michigan Administrative Hearings System
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

SDS/aca

cc:

