

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201321889
Issue No: 3008
Case No: [REDACTED]
Hearing Date: February 7, 2013
DHS SSPC Central

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 January 8, 2013. After due notice, a telephone hearing was held on February 7, 2013. Claimant appeared by conference call and provided testimony. The department was represented by [REDACTED], a recoupment specialist with the department's SSPC Central office.

ISSUE

Whether the Department of Human Services (department) properly denied Claimant's application for Food Assistance Program (FAP) benefits for failure to return the required verification?

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 November 12, 2012, Claimant applied for FAP benefits. In his application and interview, Claimant indicated, among other things, that since April 25, 2008, he has been employed with Proactive Resolutions, located at 2350 Cedar, Holt, Michigan, and that he works 40-60 hours per week and earns [REDACTED] per month. Claimant further indicated that he lives with a roommate, [REDACTED] at [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Department Exhibit 1, pp. 77-107)
2. The address of [REDACTED] is that of [REDACTED] and [REDACTED].
3. On November 13, 2012, the department mailed Claimant a Verification Checklist (DHS 3503), requesting that Claimant provide verification of his

checking account, home rent, and wages, salaries, tips, and commissions. This information was due to the department by November 26, 2012. (Department Exhibit 2, pp. 75-76)

4. On social media networking websites, Claimant has represented himself to be the co-owner of [REDACTED] in Holt, Michigan since 2009. (Department Exhibit 5, pp. 16-20).
5. In online news media publications dated September 29, 2009, January 18, 2011, March 27, 2011, Claimant and [REDACTED] represented themselves as husband and wife and co-owners of [REDACTED] in Holt, Michigan. (Department Exhibit 5, pp. 23-27)
6. In his fall 2012 campaign for the elected position of [REDACTED] of [REDACTED], Claimant represented himself to the public as co-owner of Tim Horton's in Holt, Michigan. (Department Exhibit 5, pp. 28-34)
7. On November 20, 2012, the department referred Claimant's application for a Front End Eligibility (FEE) investigation to determine whether Claimant was the owner of [REDACTED] and had failed to accurately report his income. (Department Exhibit 3, pp. 65-66)
8. On December 10, 2012, the Office of Inspector General completed its investigation of Claimant's application and determined that Claimant and [REDACTED] are (i) joint lease holders of a residence located at [REDACTED]; and (ii) co-owners of [REDACTED] located at [REDACTED] (Department Exhibit 3, pp. 65-66)
9. On December 14, 2012, the department mailed Claimant a Verification Checklist (DHS 3503), requesting that Claimant provide the department with his 2011 tax returns. The department further requested that Claimant complete the enclosed Self-Employment Income and Expense Statement (DHS-431). This information was due to the department by December 26, 2012. (Department Exhibit 6, pp. 11-12; see also Department Exhibit 2, pp.67-68)
10. While Claimant provided the department with a completed Self-Employment Income and Expense Statement, a checking account statement, and a statement of accounts paid in 2012 by [REDACTED], (and, in doing so, represented himself as President and [REDACTED] as owner of [REDACTED]), Claimant did not provide the department with his 2011 tax returns by the December 26, 2012 deadline. (Department Exhibit 2, pp. 67-72; Department Exhibit 5, p. 35)

11. On January 2, 2013, the department mailed Claimant a Notice of Case Action (DHS 1605), informing him that his FAP benefits would be closed effective February 1, 2013 due to his failure to provide the required verifications. (Department Exhibit 7, pp. 5-10)
12. On January 7, 2013, Claimant requested a hearing contesting the department's closure of his FAP benefits. In his hearing request, Claimant indicated that "this business is run on an operator's agreement. [REDACTED] owns the land, the building and the equipment." (Request for Hearing)

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 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 affective eligibility for 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 of that decision. BAM 600.

The Food Assistance Program (FAP) was established pursuant to 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 of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.30001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

Department policy indicates that clients must cooperate with the local office in determining initial and ongoing eligibility with all programs. BAM 105. This includes completion of the necessary forms. Clients who are able to but refuse to provide necessary information or take a required action are subject to penalties. BAM 105. Clients must take actions within their ability to obtain verifications. BAM 130; BEM 702. Likewise, DHS local office staff must assist clients who ask for help in completing forms. BAM 130; BEM 702; BAM 105.

Verification is usually required upon application or redetermination and for a reported change affecting eligibility or benefit level. BAM 130. The department must allow a client 10 calendar days (or other time limit specified in policy) to provide the requested verification. BAM 130. If the client is unable to provide the verification despite a reasonable effort, the department must extend the time limit at least once. BAM 130. . For MA, if the client cannot provide the verification despite a reasonable effort, the time limit is extended up to three times. BAM 130. Should the client indicate a refusal to provide a verification or, conversely, if the time period given has elapsed and the client

has not made a reasonable effort to provide it, the department may send the client a negative action notice. BAM 130. (Emphasis added).

In this case, following Claimant's November 12, 2012 application for FAP benefits, the department obtained information indicating that Claimant is the co-owner of [REDACTED], thus requiring the department to verify the accuracy of Claimant's information reported in his FAP application that he works 40-60 hours per week, earning \$ [REDACTED] per month through employer [REDACTED]. And, because Claimant failed to provide the department with requested verification of his 2011 tax returns, the department notified Claimant that, effective February 1, 2013, his FAP benefits were being closed due to his failure to verify or allow the department to verify information necessary to determine Claimant's eligibility for the FAP program.

At the February 6, 2013 hearing, Claimant testified that he and [REDACTED], whom he insisted was not his wife, co-owned [REDACTED] in Holt, Michigan from April 2008 until the summer of 2011, when they entered into an "Operator's Agreement", whereby they are each considered "operators" of the [REDACTED] in Holt, Michigan. Claimant denied that he has represented himself on social media networking websites and to the voting public during his fall 2012 campaign for [REDACTED] as a co-owner of [REDACTED] in Holt, Michigan. Claimant further denied that he earns more than \$ [REDACTED] per month as an operator of [REDACTED] and indicated that he did not produce his 2011 tax returns because he had difficulty obtaining them. Claimant volunteered no information regarding the monthly operating costs, profits, and sales generated by his business, including the number of employees he employs there.

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). 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's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. This Administrative Law Judge has also reviewed [REDACTED] requirements for an initial franchise investment operator agreement, which require an operator to pay start-up costs ranging from \$ [REDACTED] to \$ [REDACTED].

¹ See Tim Hortons Selection Process for Franchise Owners at <http://www.timhortons.com/us/en/join/franchising-program-selection.html>.

Against this backdrop, this Administrative Law Judge finds Claimant's testimony regarding his monthly income as an operator of ██████████ in Holt, Michigan to be unconvincing, unreasonable, and, indeed, disingenuous.

Accordingly, the Administrative Law Judge finds, based on the competent, material, and substantial evidence presented at the hearing, the department acted in accordance with policy in closing Claimant's FAP benefits case due to Claimant's failure to verify necessary information regarding his income.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department acted in accordance with policy in closing Claimant's FAP benefits case due to Claimant's failure to verify necessary information regarding his income. Accordingly, the department's action in this regard is **UPHELD**.

IT IS SO ORDERED.

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

Date Signed: February 8, 2013

Date Mailed: February 11, 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 60 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.

Request 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/cr

cc:

