

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

IN THE MATTER OF:

[REDACTED]

Reg. No: 201325439
Issue No: 3009
Case No: [REDACTED]
Hearing Date: March 5, 2013
County: Wayne 35

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing received on January 8, 2013. After due notice, a telephone hearing was held on March 5, 2013. Participants on behalf of Claimant included [REDACTED] [REDACTED] (Claimant) and [REDACTED] [REDACTED] (Claimant's mother). Participants on behalf of Department of Human Services (Department) included [REDACTED] (Eligibility Specialist).

ISSUES

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

FINDINGS OF FACT

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

1. Claimant was receiving FAP at all relevant times.
2. On December 31, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed Claimant's FAP case effective February 1, 2013 due to a criminal justice disqualification.
3. On January 8, 2013, the Department received Claimant's request for a hearing challenging the FAP closure.

CONCLUSIONS OF LAW

The client has the right to request a hearing for any action, failure to act or undue delay by the department. BAM 105. The department provides an administrative hearing to review the decision and determine its appropriateness. BAM 600.

The regulations that govern the hearing and appeal process for applicants and recipients of public assistance in Michigan are contained in the Michigan Administrative

Code (Mich Admin Code) Rules 400.901 through 400.951. An opportunity for a hearing shall be granted to a recipient who is aggrieved by an agency action resulting in suspension, reduction, discontinuance, or termination of assistance. Mich Admin Code 400.903(1).

The application forms, and each written notice of case action, inform clients of their right to a hearing. BAM 600. These include an explanation of how and where to file a hearing request, and the right to be assisted by and represented by anyone the client chooses. BAM 600. The client must receive a written notice of all case actions affecting eligibility or amount of benefits. When a case action is completed it must specify: (1) the action being taken by the department; (2) the reason(s) for the action; (3) the specific manual item(s) that cites the legal base for an action, or the regulation, or law itself. BAM 220.

The Michigan Administrative Hearing System (MAHS) may grant a hearing about any of the following: (1) denial of an application and/or supplemental payments; (2) reduction in the amount of program benefits or service; (3) suspension or termination of program benefits or service; (4) restrictions under which benefits or services are provided; (5) delay of any action beyond standards of promptness and (6) for FAP only, the current level of benefits or denial of expedited service. BAM 600.

For each hearing not resolved at a prehearing conference, the Department is required to complete a Hearing Summary (DHS-3050). BAM 600. In the hearing summary, all case identifiers and notations on case status must be complete; see RFF 3050. BAM 600. The DHS-3050 narrative must include **all** of the following: (1) clear statement of the case action, including all programs involved in the case action; (2) facts which led to the action; (3) policy which supported the action; (4) correct address of the AHR or, if none, the client; and (4) description of the documents the local office intends to offer as exhibits at the hearing. BAM 600.

Clients and AHRs have the right to review the case record and obtain copies of needed documents and materials relevant to the hearing. BAM 600. The Department must send a copy of the DHS-3050 and all documents and records to be used by the department at the hearing to the client **and** AHR. DHS-4772, Hearing Summary Letter, may be used for this purpose. BAM 600. However, there are 3 (three) exceptions.

During the hearing, the ALJ will follow the same rules used in circuit court ***to the extent these rules are practical in the case being heard***. BAM 600. The ALJ must ensure that the record is complete, and may do the following: (1) take an active role in questioning witnesses and parties; (2) assist either side to be sure all the necessary information is presented on the record; (3) be more lenient than a circuit court judge in deciding what evidence may be presented; and (4) refuse to accept evidence that the ALJ believes is unduly repetitious, immaterial, irrelevant or incompetent.. BAM 600.

The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether DHS policy was appropriately applied. BAM 600. The ALJ issues a final decision unless the ALJ believes that the applicable law does not support DHS policy or DHS policy is silent on the issue being considered. BAM 600. In that case, the ALJ recommends a decision and the policy hearing authority makes the final decision. BAM 600.

Claimant's request for a hearing in the instant matter concerns the Food Assistance Program (FAP) which was formerly known as the Food Stamp (FS) program. The FAP 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 of Human Services (DHS or department) administers the FAP program pursuant to MCL 400.10, *et seq.*, and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (BRM).

In the instant matter, the Department closed Claimant's FAP case due to an alleged criminal justice disqualification. Criminal justice disqualifications are covered by BEM 203. According to BEM 203, people convicted of certain crimes, fugitive felons, and probation or parole violators are not eligible for assistance.

With regard to FAP, a person is disqualified for a period of 10 years if found guilty through the Administrative Hearing Process, convicted in court or by signing a repayment and disqualification agreement (e.g., DHS-826, DHS-830) of having made a fraudulent statement or representation regarding his identity or residence in order to receive multiple FAP benefits simultaneously. BEM 230.

The Department's computer system known as "Bridges" will disqualify the individual as a fugitive felon as long as he or she is subject to arrest under an outstanding warrant. BEM 230 defines a "fugitive felon" is a person who:

- Is subject to arrest under an outstanding warrant arising from a felony charge against that person (this includes persons charged with felony welfare fraud who fail to appear in court).
- Is subject to arrest under an outstanding warrant for extradition arising from a criminal charge against that person in another jurisdiction.
- Admits to being a fugitive felon. (SEE BEM 230, p 3)

Department workers are instructed to document Bridges when the following apply:

- An individual self discloses as a fugitive felon.
- A DHS match identifies an individual as a fugitive felon.
- A written statement is obtained from a law enforcement official, prosecuting attorney or OIG identifies an individual as a fugitive felon and locating or apprehending the individual is within the officer's official duties. BEM 230, pp 3-4.

A person who is violating a condition of probation or parole imposed under a federal or state law is disqualified. BEM 230. The person is disqualified as long as the violation occurs. BEM 230.

A person who has been convicted of a felony for the use, possession, or distribution of controlled substances is disqualified if terms of probation or parole are violated, and the qualifying conviction occurred after August 22, 1996. BEM 230.

If an individual is not in violation of the terms of probation or parole, FIP benefits must be paid in the form of restricted payments and FAP benefits must be issued to an authorized representative. BEM 230.

An individual convicted of a felony for the use, possession, or distribution of controlled substances two or more times in separate periods will be permanently disqualified if both offenses occurred after August 22, 1996. BEM 230.

In support of the decision to close Claimant's FAP case due to a criminal justice disqualification, the Department provided only the following: a Hearing Summary (DHS-3050), a DHS-1605, and a copy of BEM 230. The DHS-3050 concluded that "a criminal justice disqualification automatically linked to client's case, resulting in disqualification of FAP benefits." However, there were no documents in the record to show any objective basis for the FAP closure based on criminal disqualification. Rather, the Department attached a Return of Cash Bail dated March 1, 2011 from the 36th District Court which indicated that [REDACTED] dismissed criminal offenses¹ against Claimant.

During the hearing, the Administrative Law Judge asked the Department representative what served as the factual basis for the Department's decision. The Department representative replied that she had spoken with a Front End Eligibility (FEE) Agent who reported that Claimant had an outstanding felony warrant. It should be noted that the Department did not call any witnesses. This Administrative Law Judge finds that the purported statements from the FEE Agent to be inadmissible hearsay. "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Michigan Rules of Evidence Rule 801.

Based on the lack of documentation and the inability of the Department representative to show that the Department's decision to close Claimant's FAP based on criminal disqualification was justified, this Administrative Law Judge is unable to affirm the Department. There simply is not enough evidence in this record to show that Claimant falls within the purview of BEM 230's criminal disqualification category.

Accordingly, this Administrative Law Judge finds that the Department has failed to carry its burden of proof and did not provide information necessary to enable this ALJ to determine whether the Department followed policy as required under BAM 600.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, is unable to decide whether the Department acted in accordance with policy in determining Claimant's FAP eligibility.

Therefore, the Department's FAP determination is **REVERSED**.

¹ Operating A Motor Vehicle While Intoxicated (MCL 257.625) and Operating Vehicle with Suspended License (MCL 257.904).

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

- Initiate a redetermination of Claimant's eligibility for FAP benefits and a recalculation of Claimant's FAP benefits back to the date of closure (February 1, 2013).
- The Department shall also issue Claimant any retroactive and/or supplemental FAP benefits that Claimant is entitled to receive under applicable policies.

IT IS SO ORDERED.

/s/

C. Adam Purnell
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 7, 2013

Date Mailed: March 8, 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 60 days of the filing of the original request.

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.

CAP/cr

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