

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-42001
Issue No.: 3016
Case No.: [REDACTED]
Hearing Date: [REDACTED]
County: Monroe DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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

ISSUE

Whether the Department of Human Services (Department) properly determined that the Claimant is not eligible for the Food Assistance Program (FAP) because he does not meet the requirements of the Department's "student status" policy?

FINDINGS OF FACT

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

1. The Claimant was an ongoing Food Assistance Program (FAP) recipient until [REDACTED].
2. The Claimant is enrolled in a post-secondary educational program.
3. The Claimant participates in unpaid internship.
4. On [REDACTED], the Department closed the Claimant's Food Assistance Program (FAP) benefits case because it determined that he does not meet the requirements of the "student status" policy (BEM 245).

5. The Department received the Claimant's request for a hearing on [REDACTED], protesting the closure of his Food Assistance Program (FAP) benefits.

CONCLUSIONS OF LAW

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, R 400.3001 through Rule 400.3015.

A person age 18 through 49 is in "student status" when enrolled half-time or more in a vocational, trade, business, or technical school, or a college or university. A person in "student status" may be eligible to receive Food Assistance Program (FAP) benefits if that person is participating in an on-the-job training program. Department of Human Services Bridges Eligibility Manual (BEM) 245 (January 1, 2013), pp 2-3.

- (e) "Food stamp student status" has the meaning specified in the food stamp act of 1977, 7 U.S.C. §2015(e)(1) and (2). R 400.3001 Definitions.

(e) Students

No individual who is a member of a household otherwise eligible to participate in the supplemental nutrition assistance program under this section shall be eligible to participate in the supplemental nutrition assistance program as a member of that or any other household if the individual is enrolled at least half-time in an institution of higher education, unless the individual—

- (1) is under age 18 or is age 50 or older;
- (2) is not physically or mentally fit;
- (3) is assigned to or placed in an institution of higher education through or in compliance with the requirements of—
 - (A) a program under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 *et seq.*];
 - (B) an employment and training program under this section;
 - (C) a program under section 2296 of title 19; or
 - (D) another program for the purpose of employment and training operated by a State or local government, as determined to be appropriate by the Secretary;

- (4) is employed a minimum of 20 hours per week or participating in a State or federally financed work study program during the regular school year;
- (5) is—
 - (A) a parent with responsibility for the care of a dependent child under age 6; or
 - (B) a parent with responsibility for the care of a dependent child above the age of 5 and under the age of 12 for whom adequate child care is not available to enable the individual to attend class and satisfy the requirements of paragraph (4);
- (6) is receiving benefits under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);
- (7) is so enrolled as a result of participation in the work incentive program under title IV of the Social Security Act [42 U.S.C. 601 et seq.] or its successor programs; or
- (8) is enrolled full-time in an institution of higher education, as determined by the institution, and is a single parent with responsibility for the care of a dependent child under age 12. 7 U.S.C. §2015.

The federal statute defines an “employment and training program” as a program of a State agency that meets certain requirements of the statute, but does not include a training program of a private employer. 7 USC § 2015 (c)(4)(B)

The Claimant was an ongoing Food Assistance Program (FAP) recipient until May 1, 2013. The Claimant does not dispute that he is in “student status” due to his enrollment in a master’s degree program.

On April 5, 2013, the Department closed the Claimant’s Food Assistance Program (FAP) benefits case because it determined that he does not meet the requirements of the “student status” policy in BEM 245.

The Claimant argued that he meets the requirements of the “student status” policy because he participates in an on-the-job training program. The Claimant does not dispute that he does not receive an income from his training program.

The Department’s representative argued that the Claimant’s internship does not meet the requirements of BEM 245 because he is not paid.

This Administrative Law Judge finds that BEM 245 lists several requirements for a person in “student status” to remain eligible to receive Food Assistance Program (FAP)

benefits. A person in “student status” may remain eligible to receive FAP benefits by working 20 hours per week, or by participating in an on-the-job training program. This Administrative Law Judge finds that there is no basis in the policy for requiring a person to be paid for time spent in on-the-job training.

However, a review of the legal base listed in BEM 245 for further guidance reveals that participation in an unpaid internship does not meet the requirement of the “student status” policy, but not because the person is not being paid. The federal statute that the state policy is based upon defines an on-the-job training program as a state administered program designed to provide participations with vocational skills and education. This definition would include Michigan Works! and the PATH program, but not all programs that provide training for future employment.

For the reasons listed above, this Administrative Law Judge finds that the Claimant does not meet the requirements of the “student status” policy. Based on the evidence and testimony available during the hearing, the Department has established that it properly closed the Claimant’s Food Assistance Program (FAP) benefits because he does not meet the requirements of the “student status” policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly determined that the Claimant is not eligible to receive Food Assistance Program (FAP) benefits because he does not meet the requirements of the “student status” policy.

The Department’s Food Assistance Program (FAP) eligibility determination is **AFFIRMED**. It is **SO ORDERED**.

/S/ **Kevin Scully**
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 05/22/2013

Date Mailed: 05/22/2013

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. (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

KS/kl

cc:

