

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

IN THE MATTER OF:

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Reg. No.: 2013-52477
Issue No.: 2005; 3025
Case No.: ██████████
Hearing Date: July 10, 2013
County: Wayne (55)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 July 10, 2013, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and Claimant's husband, ██████████ da. Also, Claimant's son, ██████████, was present for the hearing as an interpreter. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████ Assistant Payment Worker.

ISSUES

Did the Department properly reduce Claimant's Food Assistance Program (FAP) benefits effective April 1, 2013, ongoing?

Did the Department properly determine Claimant's Medical Assistance (MA) benefit eligibility effective April 1, 2013, ongoing?

FINDINGS OF FACT

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

1. Claimant was an ongoing recipient of FAP and MA benefits.
2. Claimant's group size is five.
3. Claimant was part of a household that included his spouse, two minor children, and an additional child over the age of eighteen.

4. All five members of Claimant's household are permanent residents who have been in the United States for less than five years.
5. During Claimant's redetermination, it was discovered that all five members of Claimant's household were receiving full benefits in error because they were coded as U.S. citizens. See Exhibit 1, Hearing Summary.
6. On March 12, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits were reduced to \$367 effective April 1, 2013, ongoing. Exhibit 1.
7. On March 12, 2013, the Notice of Case Action also notified Claimant that all five members of Claimant's household were placed in emergency services only MA benefits effective April 1, 2013, ongoing. Exhibit 1.
8. On June 10, 2013, Claimant filed a hearing request, protesting the Department's actions. Exhibit 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).

FAP benefits

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 Mich Admin Code, R 400.3001 through R 400.3015.

In this case, Claimant was an ongoing recipient of FAP and MA benefits. Claimant's group size is five. Claimant was part of a household that included her spouse, two minor children, and an additional child over the age of eighteen. All five members of Claimant's household are permanent residents who have been in the United States for less than five years. During Claimant's redetermination, it was discovered that all five members of Claimant's household were receiving full benefits in error because they were coded as U.S. citizens. See Exhibit 1, Hearing Summary. On March 12, 2013, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits were reduced to \$367 effective April 1, 2013, ongoing. Exhibit 1.

The Department determines the alien status of each non-citizen requesting benefits at application, member addition, *redetermination* and when a change is reported. BEM 225 (January 2012), p. 1. For all programs, persons listed under the program designations in Acceptable Status meet the requirement of citizenship/alien status.

BEM 225, p. 3. Eligibility may depend on whether or not the person meets the definition of Qualified Alien. BEM 225, p. 3. Qualified alien means an alien who lawfully admitted for permanent residence under the Immigration and Nationality Act (INA). BEM 225, p. 3. An additional list of qualified aliens is listed in BEM 225. See BEM 225, p. 3. For all programs, a holder of one of the following immigration statuses can receive all program benefits:

- Permanent resident alien with class code RE, AS, SI or SQ on the I-551 (former refugee or Ashlee)...
BEM 225, pp. 5-6 (please note, see BEM 225 for full list of immigration statuses).

Additionally, for FAP benefits, a person must be a U.S. citizen or have an acceptable alien status for the designated programs. BEM 225, p. 1. Regarding acceptable status, FAP benefits can be received as follows:

- 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 . . .
- A person lawfully residing in the U.S. and disabled now.
- A person who has 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 can receive FAP benefits.
BEM 225, pp. 8-9 (emphasis added).

All members of Claimant's household met the requirements of a qualified alien because they all were admitted as permanent residents. For FAP benefits, Claimant's two children are age 6 and 17. Thus, they receive FAP benefits because they are a qualified alien who is under 18 years of age. BEM 225, p. 9. On March 12, 2013, the Notice of Case action appropriately identified that Claimant's two children can receive continuing FAP benefits. See Exhibit 1.

However, Claimant, her spouse, and their additional child over the age of 18 do not qualify for FAP benefits. The Department provided at the hearing the entire household member's proof of permanent residency cards. See Exhibit 1. A review of the documents indicated that the household members did contain the I-551 code on their proof of permanent residency cards. See Exhibit 1. However, none of the cards contained the class code RE, AS, SI or SQ, which would allow them access to all benefit programs. BEM 225, pp. 5-6. Additionally, Claimant did not meet any of the requirements listed in BEM 225, pp. 8-9. Claimant did not dispute that they entered the U.S. on May 10, 2010. See Exhibit 1. Thus, they have not lived in the U.S. as a qualified alien for at least five years since their date of entry. BEM 225, p. 9.

Based on the foregoing information and evidence, the Department properly reduced Claimant's FAP benefits to \$367 effective April 1, 2013, ongoing. Exhibit 1. Claimant's

two minor children are the only members of the household who qualify for FAP benefits. BEM 225, p. 9. Claimant, her spouse, and their additional child over the age of 18 do not qualify for FAP benefits as listed in BEM 225.

MA benefits

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

On March 12, 2013, the Notice of Case Action also notified Claimant that all five members of Claimant's household were placed in emergency services only MA benefits effective April 1, 2013, ongoing. Exhibit 1.

For MA benefits, citizenship/alien status is not an eligibility factor for emergency services only (ESO) MA. BEM 225, p. 2. However, the person must meet all other eligibility factors, including residency; see BEM 220. BEM 225, p. 2. 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, p. 2.

MA coverage is limited to emergency services for any: persons with certain alien statuses or U.S. entry dates as specified in policy; or persons refusing to provide citizenship/alien status information on the application; or persons unable or refusing to provide satisfactory verification of alien information. BEM 225, p. 2.

Regarding acceptable status for MA benefits, an alien admitted into the U.S. with one of the following immigration statuses:

- Permanent resident alien with a class code on the I-551 other than RE, AM or AS.
- Alien paroled into the U.S. for at least one year under INA section 212(d)(5).
 - Exception (both statuses above): *The eligibility of an alien admitted into the U.S. on or after August 22, 1996 with one of these statuses is restricted as follows unless the alien is a qualified military alien or the spouse or dependent child of a qualified military alien:*
 - For FIP, an individual is disqualified for the first five years in the U.S.
 - For SDA, an individual is disqualified.
 - *For MA and AMP an individual is limited to emergency services for the first five years in the U.S.*
- Alien granted conditional entry under INA section 203(a)(7).
- Permanent resident alien with an I-151, Alien Registration Receipt Card. BEM 225, p. 6 (emphasis added).

As stated in the FAP analysis, none of the household members have a class code of RE, AS, SI or SQ on the I-551 to qualify for all programs. All household members in this case fall under the permanent resident alien with a class code on the I-551 other than RE, AM or AS. BEM 225, p. 6. Moreover, all members were admitted into the U.S. on or after August 22, 1996 with a permanent resident alien with a class code on the I-551 other than RE, AM or AS. BEM 225 restricts this permanent resident alien class code to only receive emergency limited services for the first five years in the U.S for MA benefits. BEM 225, p. 6. All five members of the household fall under this category and can only receive emergency limited services for the first five years. Thus, the Department properly placed all five members of Claimant's household in emergency services only MA benefits effective April 1, 2013, ongoing.

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 (i) properly reduced Claimant's FAP benefits effective April 1, 2013, ongoing and (ii) properly placed all five members of Claimant's household in emergency services only MA benefits effective April 1, 2013, ongoing.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED REVERSED for the reasons stated on the record.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: July 16, 2013

Date Mailed: July 16, 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

EJF/cl

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