

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-54455
Issue No.: 1033, 2005, 3025
Case No.: [REDACTED]
Hearing Date: July 25, 2013
County: Washtenaw

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 following Claimant's request for a hearing. After due notice, a telephone hearing was held on July 25, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED] (Eligibility Specialist) and [REDACTED] [REDACTED] (Assistance Payments Supervisor).

ISSUE

Did the Department properly deny Claimant's application for Food Assistance Program (FAP), Family Independence Program (FIP) and Medical Assistance (MA) due to failure to provide proof of citizenship or immigration status?

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 is a native and citizen of Ethiopia.
2. Claimant entered the United States (U.S.) in October, 2008.
3. The U.S. Department of Homeland Security issued Claimant an Employment Authorization Card on [REDACTED] which expired on [REDACTED].
4. On June 4, 2013, Claimant submitted an online application seeking FAP, MA and FIP benefits. Claimant indicated on page 5 that she entered the U.S. on December 8, 2008 and on page 8 that she was admitted into the U.S. as a refugee.
5. On June 7, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which did the following: (1) approved Claimant for FIP benefits for a household size of 1 in the amount of \$ [REDACTED] per month; (2) closed Claimant's MA case effective July 1, 2013; and (3) approved FAP in the amount of \$ [REDACTED] per

month for June 4, 2013 through June 30, 2013 and \$ [REDACTED] per month for July 1, 2013 through May 31, 2014.

6. On June 19, 2013, Claimant requested a hearing regarding FIP, MA, FAP, Child Development and Care (CDC) and State Emergency Relief (SER).

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3101 through R 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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.

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.

The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACS, R 400.3151 through R 400.3180.

The Child Development and Care (CDC) program is 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 Mich Admin Code, R 400.5001 through R 400.5015.

Department policy requires the Department determine the alien status of each non-citizen requesting benefits at application, member addition, redetermination and when a change is reported. BAM 225, p 1.

A person must be a U.S. citizen or have an acceptable alien status for the designated programs. Persons who do not meet this requirement, or who refuse to indicate their status, are disqualified. BEM 225, p 1.

Non-immigrants (for example, students, tourists, etc.) and undocumented non-citizens are not eligible. 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, p 1.

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; see BEM 220, p 1.

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 1. U.S. citizenship must be verified with an acceptable document to continue to receive Medicaid; see BAM 130. The alien status of each non-citizen must be verified to be eligible for full MA coverage. BEM 225, p 1.

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. The definition of a qualified alien includes specific alien statuses, but not all alien statuses, in conjunction with other criteria. BEM 225, p 3. Not all acceptable alien statuses require that the person be a qualified alien. BEM 225, p 3.

BEM 225 defines a qualified alien as an alien who is: (1) lawfully admitted for permanent residence under the Immigration and Nationality Act (INA); (2) granted asylum under section 208 of the INA; (3) a refugee who is admitted to the U.S. under section 207 of the INA; (4) paroled into the U.S. under section 212(d)(5) of the INA for a period of at least one year; (5) an alien whose deportation is being withheld under section 241(b)(3) or 243(h) of the INA; (6) granted conditional entry pursuant to section 203(a)(7) of the INA; or (7) a Cuban/Haitian entrant; or (8) an alien who has been battered or subjected to extreme cruelty in the U.S. by a U.S. Citizen or legal permanent resident spouse or parent, or by a member of the spouse or parent's family living in the same household, or is the parent or child of a battered person. BEM 225, p 3.

According to BEM 225, p 27 (exhibit 6), in order to be eligible for FIP, FAP, MA and AMP, for a person who enters the U.S. after August 22, 1996 as a Permanent Resident Alien (I-551) class code other than RE, AM or AS, is not eligible for the first five years. This person may be eligible for emergency MA only. BEM 225, p 27 (exhibit 6).

Here, the Department contends that BEM 225 provides that Claimant is not eligible for FIP, FAP, MA or AMP until December 8, 2013. Claimant, on the other hand, contends that she is eligible for these programs because she is a permanent resident or, in the alternative, is a political asylee under Section 208.

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). 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). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW 2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The records indicate that Claimant provided the Department with Permanent Resident Card which indicated that Claimant has been a resident of the U.S. since December 8, 2008. At the hearing, Claimant, for the first time, provided the Department with an Employment Authorization Card from the U.S. Department of Homeland Security which indicated that her card was valid from October 28, 2008, but this card **expired on** [REDACTED]. The Department, however, provided a documentation record which indicated that during the pre-hearing conference on June 24, 2013 "I called client and she was told that there was an agency finding and that her application stated that she was not a citizen but after looking into the EDM verifications that she did submit her permanent resident card. The correct information has been budgeted in to the case for her and Haleluya." This document appears to be a concession by the Department that Claimant is eligible for assistance because she produced a permanent resident card. The Department's position is ambiguous with regard to Claimant's MA eligibility. The Notice of Case Action says Claimant's MA is denied but the other documentation indicates that she may be eligible. Based on the competent, material, and substantial evidence presented during the hearing, this Administrative Law Judge finds that the Department agrees that Claimant is (or may be) eligible for MA or AMP before December 8, 2013.

With regard to Claimant's request for a hearing concerning FIP, FAP, SER and CDC, the regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 400.901 through R 400.951. Rule 400.903 provides in relevant part:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because a claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by a Department action resulting in suspension, reduction, discontinuance, or termination of assistance. [R 400.903(1).]

At the time of the claimant's hearing request, the department had not taken any action to suspend, reduce, discontinue or terminate Claimant's FIP, FAP, SER and CDC benefits. In fact, Claimant did not even apply for SER and CDC assistance. Claimant agreed to this fact at the hearing. In addition, the Department did not take any negative action regarding her FAP and FIP cases. Claimant's request for hearing was because she believed the Department denied her FIP and FAP application, but that did not occur. Under the administrative rule discussed above, Claimant does not have a right to a hearing concerning FIP, FAP, SER and CDC and thus, this Administrative Law Judge has no jurisdiction in those matters.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did not act properly when it determined Claimant's eligibility for MA and/or AMP.

Accordingly, the Department's AMP FIP FAP MA SDA CDC decision is AFFIRMED. **REVERSED**.

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

1. The Department shall initiate a reprocessing and recertification of Claimant's application with regard to MA only dated June 4, 2013.
2. To the extent required by policy, the Department shall provide Claimant with retroactive and/or supplemental MA benefits.

Based on the above Findings of Fact and Conclusions of Law, Claimant's request for hearing concerning FIP, FAP, SER and CDC is DISMISSED for lack of jurisdiction.

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

Date Signed: July 26, 2013

Date Mailed: July 29, 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

CAP/las

cc:

