

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

IN THE MATTER OF:

Reg.

No:

201360550

Issue No:

3016

Case No:

Hearing Date:

August 28, 2013

DHS SSPC WEST

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 authorized representative's request for a hearing received by the Department of Human Services (department) on July 26, 2013. After due notice, a telephone hearing was held on August 28, 2013. Claimant appeared and provided testimony. The department was represented by [REDACTED] an eligibility specialist with the department's Self Service Processing Center West office.

ISSUE

Whether the Department of Human Services (department) properly closed Claimant's Food Assistance Program (FAP) benefits due to Claimant's student status?

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 May 28, 2013, Claimant applied for FAP benefits.
2. On June 26, 2013, Claimant was interviewed by the department and confirmed that he was enrolled in a university program and approved for a work study program. (Department Exhibit 1)
3. On June 26, 2013, the department mailed Claimant a Verification Checklist (DHS 3503), requesting that Claimant provide verification of his student status, among other things. This information was due to the department by July 8, 2013.

4. Claimant did not provide the required verifications by the July 8, 2013 deadline but did so on July 15, 2013, at which time Claimant's FAP benefits were reinstated.
5. Claimant's verifications submitted on July 15, 2013 included a Student Employee Termination Form from Mott Community College, indicating that Claimant's work study employment with the college ended on June 28, 2013. (Department Exhibit 2)
6. On July 18, 2013, the department mailed Claimant a Notice of Case Action (DHS 1605), advising Claimant that his FAP benefits case would be closed for the reason that Claimant no longer meets the criteria for eligibility due to his student status.
7. On July 25, 2013, the department received Claimant's hearing request contesting the department's closure of his FAP case. (Request for a Hearing)

CONCLUSIONS OF LAW

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. Department of Human Services Bridges Administrative Manual (BAM) 600 (2011), p. 1. The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in sections 400.901 to 400.951 of the Michigan Administrative Code (Mich Admin Code). An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. Mich Admin Code R 400.903(1).

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 provides that clients in student status are no longer eligible to receive FAP benefits based solely on an approved education plan. BEM 245. A person is in student status if the person is 18 through 49 years old and enrolled half-time or more in: (i) a vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate; or (ii) a regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required. BEM 245.

In order for an individual in student status to be eligible for FAP benefits, the individual must meet one of the following criteria:

- Receiving Family Independence Program benefits.
- Enrolled in an institution of higher education as a result of participation in:
 - Approved employment -related activities.
 - A JTPA program.
 - A program under Section 236 of the Trade Readjustment Act of 1974.
 - Another State or local government employment and training program.
- Physically or mentally unfit for employment.
- Employed for at least 20 hours per week and paid for such employment.
- Self-employed for at least 20 hours per week and earning weekly income at least equivalent to the federal minimum wage multiplied by 20 hours.
- Participating in an on-the-job training program. A person is considered to be participating in an on-the-job training program only during the period of time the person is being trained by the employer.
- Participating in a state or federally-funded work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965, as amended) during the regular school year. To qualify under this student status eligibility provision, the student must be approved for work study during the school term and anticipate actually working during that time, unless exempted because the student:
 - Starts the month the school term begins or the month work study is approved, whichever is later.
 - Continues until the end of the month in which the school term ends, or when you become aware that the student has refused a work-study assignment.
 - Remains between terms or semesters when the break is less than a full month, or the student is still participating in work study during the break.
- Providing more than half of the physical care of a group member under the age of six.
- Providing more than half of the physical care of a group member age six through eleven and the local office has determined adequate child care is not available to:
 - Enable the person to attend class and work at least 20 hours per week.
 - Participate in a state or federally-financed work study program during the regular school year.

- A single parent enrolled full-time in an institution of higher education who cares for a dependent under age 12. This includes a person who does not live with his or her spouse, who has parental control over a child who does **not** live with his or her natural, adoptive or stepparent. BEM 245.

For the care of a child under age six, the department shall consider the student to be providing physical care as long as he or she claims primary responsibility for such care, even though another adult may be in the FAP group. Moreover, when determining the availability of adequate child care for a child between the ages of six and 11, another person in the home, over 18 years of age, need not be a FAP group member to provide care. BEM 245.

A person remains in student status while attending classes regularly. Student status continues during official school vacations and periods of extended illness. Student status does not continue if the student is suspended or does not intend to register for the next school term (excluding summer term). BEM 245.

In this case, at the August 28, 2013 hearing, Claimant acknowledged that at the time the department closed Claimant's FAP benefits case on July 18, 2013, he had been enrolled since July 10, 2013 in an on-the-job training program in addition to his college enrollment, however had not advised the department of this new on-the-job training program when he returned other required verifications on July 15, 2013.

The department's representative, Jeanette Emerick, testified that Claimant's current enrollment in an on-the-job training program would meet the criteria in BEM 245 to allow Claimant to be eligible for FAP benefits despite his student status. Ms. Emerick further testified that the department had no knowledge of Claimant's participation in this program at the time that the department closed Claimant's FAP case.

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).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record and finds that, based on the competent, material, and substantial evidence presented during the August 28, 2013 hearing, because Claimant failed to timely submit the required verification of his enrollment in the on-the-job training program, the department acted in accordance with policy in determining on July 18, 2013 that Claimant was not eligible for FAP benefits due to his student status.

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 determining on July 18, 2013 that Claimant was not eligible for FAP benefits due to his student status. 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: August 28, 2013

Date Mailed: August 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 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:

201360550/SDS

Michigan Administrative Hearings System
Recons ideration/Rehearing Request
P.O. Box 30639
Lansing, MI 48909-07322

SDS/hj

cc:

