

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2014-10161
Issue No(s): 3009
Case No.: [REDACTED]
Hearing Date: December 5, 2013
County: Kalamazoo

ADMINISTRATIVE LAW JUDGE: Darryl T. Johnson

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on December 5, 2013, from Lansing, Michigan. Participants on behalf of Claimant included the Claimant, [REDACTED] and [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Eligibility Specialist.

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) benefits?

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 on-going recipient of FAP.
2. On September 16, 2013, a felony warrant was issued for Claimant's arrest, and the Kalamazoo County Sheriff's Department entered into the Law Enforcement Information Network notice of the warrant.
3. On October 24, 2013, the Department matched Claimant's name with the Fugitive Felon List.
4. Claimant was automatically terminated from receiving FAP benefits as of November 1, 2013, because of the match with the Fugitive Felon List.
5. Claimant was notified of his ineligibility in a Notice of Case Action dated October 14, 2013.
6. Claimant requested a hearing on November 5, 2013.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Claimant testified that he was charged with Operating While Impaired and carrying a concealed weapon as a result of an accident on August 25, 2013. He was informed that a warrant was issued for his arrest and he surrendered himself. He was released the same day and remains free on a personal recognizance bond. He has a preliminary examination scheduled for December 9, 2013.

Michigan statute provides in MCL 400.10b that “the department shall not grant public assistance under [the Social Welfare Act] to an individual if the department receives information . . . that the individual is subject to arrest under an outstanding warrant arising from a felony charge against that individual . . .”

The Claimant originally had his preliminary examination scheduled for November 20, 2013. That examination was moved to December 9, 2013. Perhaps coincidentally, the Department provided a letter (Page 1 of Exhibit 2) dated November 20, 2013, stating the Law Enforcement Information Network showed that Claimant “Was identified as an individual subject to an arrest under an outstanding warrant arising from a felony charge Felony warrant issued 9/16/2013.”

BEM 204 describes a fugitive felon as a person who “is subject to arrest under an outstanding warrant arising from a felony charge against that person . . .” ERM 202 notes that fugitive felons are not eligible for emergency relief. BAM 811 states:

“Michigan State Police (MSP) identifies clients who are currently fugitive felons on a monthly basis. MSP also identifies when the client is no longer a fugitive felon on a daily basis.”

“This automated process in Bridges identifies an exact match based on first name, last name, date of birth, social security number and gender.”

“The monthly match will set to close any clients identified as a fugitive felon.”

“When Bridges sets a client to close, the DHS-1605, Notice of Case Action, will be generated. This notice will inform the client that they have a

criminal justice disqualification showing, and to go to a local law enforcement agency to resolve the issue.”

“The daily fugitive felon match will identify those who have a criminal disqualification on an active case who are no longer a fugitive felon and create a task and reminder. The specialists are to update the conviction screen and review eligibility within the standard of promptness which is 10 days for FAP and 15 days for the other programs.”

There is no dispute that a warrant was issued for the Claimant’s arrest on felony charges. The Claimant testified that he surrendered himself to the Kalamazoo County Sheriff’s Department and was released on bond. According to the online “The Law Dictionary”, a “fugitive” is “One who flees; always used in law with the implication of a flight, evasion, or escape from some duty or penalty or from the consequences of a misdeed.” <http://thelawdictionary.org/fugitive/>

When the Department presents a case for an administrative hearing, policy allows the Department to use the hearing summary as a guide when presenting the evidence, witnesses and exhibits that support the Department’s position. See BAM 600, page 28. But BAM 600 also requires the Department to always include the following in planning the case presentation: (1) an explanation of the action(s) taken; (2) a summary of the policy or laws used to determine that the action taken was correct; (3) any clarifications by central office staff of the policy or laws used; (4) the facts which led to the conclusion that the policy is relevant to the disputed case action; (5) the DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. See BAM 600 at page 28. This implies that the Department has the initial burden of going forward with evidence during an administrative hearing.

Placing the burden of proof on the Department is a question of policy and fairness, but it is also supported by Michigan law. In *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW 2d 88 (1987), the Michigan Supreme Court, citing *Kar v Hogan*, 399 Mich 529; 251 NW2d 77 (1979), said:

The term “burden of proof” encompasses two separate meanings. 9 Wigmore, *Evidence* (Chadbourn rev), § 24 83 et seq., pp 276 ff.; McCormick, *Evidence* (3d ed), § 336, p 946. One of these meanings is the burden of persuasion or the risk of non-persuasion.

The Supreme Court then added:

The burden of producing evidence on an issue means the liability to an adverse ruling (generally a finding or a directed verdict) if evidence on the issue has not been produced. It is usually cast first upon the party who has pleaded the existence of the fact, but as we shall see, the burden may shift to the adversary when the pleader has his initial duty. The burden of producing evidence is a critical mechanism in a jury trial, as it empowers the judge to decide the case without jury consideration when a party fails to sustain the burden.

The burden of persuasion becomes a crucial factor only if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced. See McKinstry, 428 Mich at 93- 94, quoting McCormick, Evidence (3d ed), § 336, p 947.

In other words, the burden of producing evidence (i.e., going forward with evidence) involves a party's duty to introduce enough evidence to allow the trier of fact to render a reasonable and informed decision. Thus, the Department must provide sufficient evidence to enable the Administrative Law Judge to ascertain whether the Department followed policy in a particular circumstance. It must also prove in cases such as this that a Claimant is, and was, a fugitive felon.

The Department provided a Notice of Case Action dated October 14, 2013, in which the Claimant was informed that his assistance was closed because of a "criminal justice disqualification." The Department also provided the November 20, 2013 letter referenced above which states that the Department verified on November 20, 2013 that the Claimant was subject to an outstanding warrant. The Claimant testified that he had appeared in court in October and was released on bond. Inasmuch as the Claimant was out on bond when the Department verified that he is subject to arrest under an outstanding warrant, and since the Claimant has a pending hearing in the Circuit Court on the felony charges, the conclusion must follow that he remains a fugitive felon.

The Claimant's contention that he is not a "fugitive" felon since he has surrendered himself in response to the warrant is not illogical. The fact that he has been released on a personal recognizance bond is indicative of a belief on the part of the criminal court that he does not pose a risk of flight. However, the Department has provided evidence that he is still "subject to an arrest under an outstanding warrant arising from a felony charge . . ."

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department satisfied its burden of showing that it acted in accordance with Department policy when it closed Claimant's FAP benefits.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



Darryl T. Johnson
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 6, 2013

Date Mailed: December 6, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

DTJ/las

cc:

