

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

IN THE MATTER OF:



Reg. No.: 201411633
Issue No.: 3009
Case No.: [REDACTED]
Hearing Date: December 10, 2013
County: MiCAP

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 three-way telephone hearing was held on December 10, 2013 from Lansing, Michigan. Claimant appeared via telephone and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Hearing Coordinator).

ISSUE

Did the Department properly deny Claimant's application for Food Assistance Program (FAP) benefits due to a criminal justice disqualification?

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 applied for FAP on October 7, 2013.
2. On October 22, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied Claimant's application for FAP benefits because "you or a member of your group is not eligible for assistance due to a criminal justice disqualification. Please have the disqualified member of your group contact a law enforcement agency—such as a police department, sheriff's department or the Michigan State Police—to resolve. The law enforcement agency will require you to provide picture identification."
3. On October 29, 2013, Claimant requested a hearing to challenge the application denial.

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.

According to BEM 203, people convicted of certain crimes, fugitive felons, and probation/parole violators are not eligible for assistance. (7-1-2013) A “fugitive felon” is a person who: (1) is subject to arrest under an outstanding warrant arising from a felony charge against that person (this includes persons charged with felony welfare fraud who fail to appear in court); (2) is subject to arrest under an outstanding warrant for extradition arising from a criminal charge against that person in another jurisdiction; or (3) admits to being a fugitive felon. BEM 203.

Bridges will disqualify the individual as a fugitive felon as long as he or she is subject to arrest under an outstanding warrant. BEM 203. Law enforcement officers are entitled to receive recipient’s addresses if their official duties are apprehending persons wanted for a felony as long as a DHS match or a written statement is received. BEM 203.

A person who is violating a condition of probation or parole imposed under a federal or state law is disqualified. BEM 203. The person is disqualified as long as the violation occurs. BEM 203.

When Bridges sets a client to close, the DHS-1605, Notice of Case Action, will be generated. BAM 811. 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. BAM 811.

Here, the Department contends that Claimant is not eligible for FAP because the Michigan State Police interface identified him as having a criminal justice disqualification. The Department’s initial hearing packet submitted on November 6, 2013 only consisted of the hearing summary and the notice of case action. Later, on November 21, 2013, the Department faxed 31 additional documents which included copies of Bridges policies including a letter from an OIG which purports to support the Michigan State Police Law Enforcement Information Network (LEIN) interface. However, the Department worker who presented during the hearing stated that she did not know whether Claimant was served with a copy of the November 21, 2013 proposed exhibits. The Department worker then testified that the practice was to send the documents to Michigan Administrative Hearing System (MAHS) who was responsible to see that

Claimant is served with the Department's exhibits. The Department worker also testified that she viewed the Michigan Department of Corrections (MDOC) Offender Tracking Information System (OTIS) which revealed that Claimant was a probation absconder from Saginaw County.

Claimant, on the other hand, denies that he received anything in the mail. Claimant initially stated that he was unaware of any criminal justice violations. Later, Claimant conceded that he received the notice of case action, but that he never contacted any local law enforcement agency to clear up the matter. Then Claimant admitted that he thought that he was released from probation in 2010.

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 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has thoroughly reviewed the evidence and the testimony in this matter. First of all, it is the Department's responsibility to see that Claimant receives a copy of the Department's proposed exhibits; MAHS does not have this responsibility. Because the Department could not ensure that it properly sent Claimant the OIG letter, this Administrative Law Judge will not admit the November 21, 2013 proposed exhibits into evidence. However, this Administrative Law Judge will consider the Department representative's testimony that Claimant's present status on the MDOC OTIS website shows that he is a probation absconder. Claimant's testimony was highly suspicious. When questioned by the ALJ, he was often evasive and frequently changed his answers. This ALJ finds that Claimant was simply not credible. Based on the substantial, material and competent evidence on the whole record, this ALJ finds that Claimant is not eligible for FAP as he, at the time of application, was in violation of a condition of his probation under BEM 203.

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 acted in accordance with Department policy when it denied Claimant's FAP application based on a criminal justice disqualification.

DECISION AND ORDER

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

IT IS SO ORDERED.

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

Date Signed: December 11, 2013

Date Mailed: December 12, 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

201411633/CAP

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

CAP/aca

cc:

