

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201416675
Issue No.: 3002
Case No.: [REDACTED]
Hearing Date: January 29, 2014
County: Gogebic

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 telephone hearing was held on January 29, 2014 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Director of Gogebic County DHS), [REDACTED] (General Services Program Manager) and [REDACTED] (Eligibility Specialist).

ISSUE

Did the Department properly determined Claimant's Food Assistance Program (FAP) eligibility?

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 active for FAP with a group size of 1.
2. On October 15, 2013, Claimant contacted the Department and advised his caseworker that he planned a trip to Florida and that he did not expect to return in 30 days.
3. On November 8, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed Claimant's FAP case effective December 1, 2013.

4. On November 17, 2013, Claimant requested a hearing to dispute the FAP closure.¹

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.

To be eligible (for FAP benefits), a person must be a Michigan resident. (With additions supplied). BAM 220, p 1 (2-1-2014). A person is a resident if **all** of the following apply:

- Is not receiving assistance from another state.
- Is living in Michigan, except for a temporary absence.
- Intends to remain in the state permanently or indefinitely. See BEM 220, pp 1.

A person is considered a resident while living in Michigan for any purpose **other than a vacation**, even if there is no intent to remain in the state permanently or indefinitely. Eligible persons may include:

- Persons who entered the state with a job commitment or to seek employment; and
- Students (for FAP **only**, this includes students living at home during a school break.) BEM 220, pp 1-2.

A person who is temporarily absent from the group is considered living with the group. BEM 212, p 3 (2-1-2014). A person's absence is temporary if **all** of the following are true:

- The person's location is known.
- The person lived with the group before an absence (newborns are considered to have lived with the group).
- There is a definite plan for return.

¹ Claimant also apparently requested a hearing concerning Medical Assistance (MA) but the Department's Notice of Case Action (DHS-1605) did not take negative action against Claimant related to MA.

- **The absence has lasted or is expected to last 30 days or less.**

Exception: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home. BEM 212, p 3. (Emphasis added.)

Here, the Department contends that Claimant's FAP case closed effective December 1, 2013 after he was no longer considered a resident of Michigan. The Department submits that Claimant voluntarily left Michigan on October 15, 2013 and went to his Florida residence for more than 30 days. The Department further contends that Claimant customarily leaves Michigan for Florida twice a year. Claimant later returned to Michigan from Florida in January, 2014. Claimant, on the other hand, contends that he travels to Florida for medical treatment.

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 carefully considered and weighed the testimony and other evidence in the record. The record contains a copy of Claimant's flight itinerary which confirms that he departed from Wisconsin and flew to Fort Myers, Florida on October 15, 2013. The record also includes a copy of a Bridges document entitled "Individual Household Status" which indicates Claimant's expected date of return was January 6, 2014. This Administrative Law Judge finds that Claimant was not temporarily absent from the group, for purposes of BEM 212, because his absence was not expected to last 30 days or less. Although there was evidence that Claimant expected to return to Michigan within 90 days, there was no evidence that Claimant spent time in a Florida hospital during that time period. Moreover, Claimant was a FAP group of 1 and his departure from Michigan means that there was no FAP group for Claimant to join upon his return from Florida. This Administrative Law Judge also finds that Claimant's testimony that he visited Florida for medical treatment is not credible. Claimant failed to provide specific and relevant details about his medical condition. For instance, Claimant did not explain why his medical condition required treatment in Florida and could not be managed by health professionals in Michigan. Accordingly, Claimant was not eligible for FAP because he was no longer a resident, and was not temporarily absent, when he left the State of Michigan for more than 30 days.

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 closed Claimant's FAP case.

Claimant also requested a hearing concerning Medical Assistance (MA). The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act, 42 USC 1396-1396w-5, and is implemented by 42 CFR 400.200 to 1008.59. The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10 and MCL 400.105.

MAC 400.903 lays out instances where recipients of assistance have a right to an administrative hearing within the Michigan DHS. This rule specifies when an opportunity for a hearing shall be granted:

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

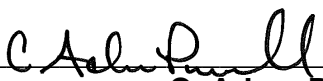
At the time of Claimant's hearing request, the Department had not taken any action to suspend, reduce, discontinue or terminate Claimant's MA benefits or, in the alternative, Claimant did not have an active MA case that was affected by the Department's November 8, 2013 Notice of Case Action. Under the administrative rule discussed above, Claimant does not have a right to a hearing concerning MA and thus, this Administrative Law Judge has no jurisdiction in this matter.

DECISION AND ORDER

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

Claimant's request for hearing concerning Medical Assistance is **DISMISSED** for lack of jurisdiction.

IT IS SO ORDERED.


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

Date Signed: February 5, 2014

Date Mailed: February 6, 2014

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

CAP/aca

cc:

