

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-006080
Issue No.: 3001
Case No.: [REDACTED]
Hearing Date: May 28, 2015
County: Washtenaw (20)

ADMINISTRATIVE LAW JUDGE: Darryl 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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on May 28, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included Assistance Payments Supervisor [REDACTED] and Eligibility Specialist [REDACTED]. Law Student Extern [REDACTED] observed with the consent of the parties.

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 FAP recipient with benefits based upon a group including himself and his two sons.
2. On March 3, 2015, the Department received notice that the two sons were removed from Claimant's custody by Child Protective Services (CPS).
3. Claimant was, at the time, a full-time student at the [REDACTED], and receiving Retirement, Survivors, and Disability Income (RSDI) from the Social Security Administration due to his disability.

4. On March 3, 2015, the Department mailed to Claimant a Notice of Case Action (NCA) (Exhibit A Pages 11-12) informing him that his FAP would be closing effective April 1, 2015.
5. The Department received Claimant's hearing request on April 2, 2015.

CONCLUSIONS OF LAW

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

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

When the Department received notification that Claimant's two minor sons were removed from his custody, they closed Claimant's FAP because he was a full-time student and did not meet any of the exceptions found in BEM 245 (7/1/14) at pages 3-5.

STUDENT STATUS

RCA and RMA Only

A full-time student in post-secondary education is **not** eligible for RCA or RMA. The school determines full-time enrollment and attendance.

FAP Only

A person is in student status if he is:

- Age 18 through 49 and
- Enrolled half-time or more in a:
 - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.
 - Regular curriculum at a college or university that offers degree programs **regardless** of whether a diploma is required.

In order for a person in student status to be eligible, they must meet one of the following criteria:

- Receiving FIP.
- Enrolled in an institution of higher education as a result of participation in:
 - A JTPA program.
 - A program under section 236 of the Trade Readjustment Act of 1974 (U. S. C. 2296).
 - 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 provision the student must be approved for work study during the school term and anticipate actually working during that time. The exemption:

- 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 the local office becomes 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.

For the care of a child under age six, 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.

When determining the availability of adequate child care for a child six through 11, another person in the home, over 18, need not be a FAP group member to provide care.

The 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).

During the hearing the Department explained that it had concluded, after Claimant submitted his hearing request, that it had not taken into account the fact that he was receiving RSDI and therefore is considered disabled. Therefore, they were going to redetermine his eligibility as a group of one. It also came out during the hearing that Claimant is now on a leave of absence from school, and he does not know when he will be returning. Testimony was offered that Claimant was given a Verification Checklist after he requested a hearing, and that he did not fully respond to it. Because that did

not play a part in the Department's decision to close his FAP as reflected in the NCA it is not considered in this Decision. That could, however, factor into the Department's consideration of his continuing eligibility.

The evidence is insufficient to establish that Claimant was on a leave of absence at the time the Department closed his benefits. The evidence is sufficient to find that Claimant was a disabled full-time student when the NCA was mailed. Therefore, the Department erred in closing Claimant's FAP. Because he requested a leave of absence after he requested a hearing, that fact cannot be used as a basis, in this decision, to find that he was not in student status when the NCA was mailed. The Department is cautioned, however, to consider whether his present leave of absence is consistent with his status as a full-time student.

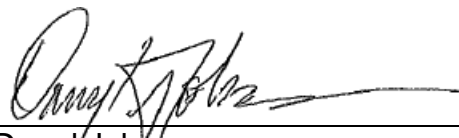
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it closed Claimant's FAP effective April 1, 2015, based upon his children being removed from his home, without considering his disabled status.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Redetermine Claimant's FAP benefit eligibility, effective April 1, 2015;
2. Issue a supplement to Claimant for any benefits improperly not issued.



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/29/2015**

Date Mailed: **5/29/2015**

DJ/jaf

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from MAHS within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion. MAHS **MAY** grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc:

