

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-012989
Issue No.: 3001
Case No.: [REDACTED]
Hearing Date: August 27, 2015
County: KENT-DISTRICT 1
(FRANKLIN)

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, telephone hearing was held on August 27, 2015, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department included [REDACTED], Family Independence Manager, and [REDACTED], Eligibility Specialist. [REDACTED] of Linguistica International acted as an interpreter for the Claimant.

ISSUE

Did the Department of Health and Human Services (Department) properly deny the Claimant's application for Food Assistance Program (FAP) based on his citizenship status?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On May 14, 2015, the Department received the Claimant's application for Food Assistance Program (FAP) benefits.
2. On May 14, 2015, the Department denied the Claimant's Food Assistance Program (FAP) application based on his citizenship status.
3. On May 19, 2015, the Department received the Claimant's request for a hearing protesting the denial of Food Assistance Program (FAP) benefits.
4. On July 7, 2014, the Claimant's request for a hearing was dismissed after he failed to attend the hearing.

5. On July 15, 2014, the Department received the Claimant's request for a hearing protesting the denial of his Food Assistance Program (FAP) application.

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.

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. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.
- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2015), pp 3-4.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 (April 1, 2015), p. 6, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days.

On May 14, 2015, the Department received the Claimant's application for FAP benefits. The Department denied this application based on his citizenship status. On May 29, 2014, the Department received the Claimant's request for a hearing protesting the denial of his FAP application. On July 7, 2014, the Claimant's request for a hearing was dismissed after he failed to attend the hearing.

On July 15, 2015, the Department received the Claimant's request for a hearing, once again protesting the denial of his May 14, 2015, application for FAP benefits.

This Administrative Law Judge finds that the Claimant is not entitled to a second hearing on the issue of whether the Department properly denied his May 14, 2015, application for FAP benefits. The Claimant did not dispute that he received adequate and timely notice of this hearing and this hearing was properly dismissed when he failed to attend.

The issue presented here is similar of the doctrines of collateral estoppel and res judicata. Under Michigan law, these doctrines prevent parties from bringing an action or raising an issue that was previously decided by a court in a final judgment. The Claimant's request for a hearing protesting the denial of his May 14, 2015, application for FAP benefits was previously dismissed. Despite the fact that his July 15, 2015, request for a hearing is timely with respect to the May 14, 2015, denial of benefits, the issues raised in that hearing cannot be considered by this Administrative Law Judge. To find otherwise, would permit endless re-litigation of the same issues between the same parties or their group members.

In the alternative, if the previous dismissal of the Claimant's request for a hearing is found to not to be a final judgment of the Department's denial of FAP benefits, the Department's denial of FAP benefits should be affirmed.

The Claimant is not a United States Citizen. The Department presented a copy of a I-94 Arrival Record showing that the Claimant was granted a parole pursuant to 8 CFR 212.12 on March 3, 1993. This federal regulation applies to any native of Cuba who last came to the United States between April 15, 1980, and October 20, 1980, also referred to as a Mariel Cuban.

Cuban/Haitian entrants that enter the U.S. are eligible for FAP benefits for the first seven years. If they adjust to another category which requires them to meet the five-year requirement, they are still eligible for the first seven years. Department of Health and Human Services Bridges Eligibility Manual (BEM) 225 (October 1, 2014), p 7.


Since more than seven years have passed since the Claimant received his parole from deportation as a Cuban entrant, and the Claimant has failed to establish that he has been granted another acceptable immigration status, he is not eligible for FAP benefits.

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, if the Claimant's request for a

hearing is not dismissed, that the Department acted in accordance with Department policy when it denied the Claimant's application for Food Assistance Program (FAP) benefits based on his citizenship status.

DECISION AND ORDER

Accordingly, the Department's decision is AFFIRMED.



Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **9/1/2015**

Date Mailed: **9/1/2015**

KS/■

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 party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (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:

