

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-013751
Issue No.: 3001
Case No.: [REDACTED]
Hearing Date: September 15, 2015
County: Oakland District 2

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on September 15, 2015 from Lansing, Michigan. Claimant personally appeared and [REDACTED] (Claimant's friend) testified as a witness. [REDACTED] (Family Independence Manager) and [REDACTED] (Assistance Payments Worker) represented the Department of Health and Human Services (Department).

ISSUE

Did the Department properly deny Claimant's application for Food Assistance Program (FAP) benefits based upon his citizenship/alien 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. Claimant is not a citizen of the United States.
2. Claimant was born in Iraq and entered the U.S. in 1976 at the age of 14.
3. Claimant's applied for FAP benefits on June 12, 2015. (Exhibit 1, pp 7-26)
4. On the application, Claimant appeared to indicate that he was not a U.S. citizen and that his date of entry to the U.S. was 1976. (Exhibit 1, p 9)
5. On June 15, 2015, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied his application for FAP benefits because Claimant is not a citizen or eligible alien or has not provided proof of citizenship or immigration status. (Exhibit 1, pp 3-6)

6. On June 23, 2015, Claimant requested a hearing to dispute the denial of his 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.

The Department must determine the alien status of each non-citizen requesting benefits at application, member addition, redetermination and when a change is reported. BEM 225 (10-1-2014) page 1. A person must be a U.S. citizen or have an acceptable alien status for the designated programs. BEM 225, p 1. Persons who do not meet this requirement, or who refuse to indicate their status, are disqualified. BEM 225, p 1.

For purposes of FAP benefits, non-immigrants (for example, students, tourists, etc.) and undocumented non-citizens are **not** eligible. A non-immigrant temporarily enters the U.S. for a specific purpose such as business, study, temporary employment, or pleasure. When a person is admitted to the United States, a USCIS official will assign a non-immigrant category according to the purpose of the visit. BEM 225, p 1.

Persons listed under the program designations in Acceptable Status meet the requirement of citizenship/alien status. BEM 225, p 3. Eligibility may depend on whether or not the person meets the definition of "Qualified Alien." BEM 225, p 3. The definition of qualified alien includes specific alien statuses, but not all alien statuses. BEM 225, p 3. This definition is used in several of the acceptable alien statuses, in conjunction with other criteria. BEM 225, p 3. Not all acceptable alien statuses require that the person be a qualified alien. BEM 225, p 3.

BEM 225 defines a qualified alien as an alien who is: (1) lawfully admitted for permanent residence under the INA; (2) granted asylum under section 208 of the INA; (3) a refugee who is admitted to the U.S. under section 207 of the INA;¹ (4) paroled into the U.S. under section 212(d)(5) of the INA for a period of at least one year; (5) an alien whose deportation is being withheld under section 241(b)(3) or 243(h) of the INA; (6) granted conditional entry pursuant to section 203(a)(7) of the INA; (7) a Cuban/Haitian

¹ This includes Iraqi and Afghan special immigrants.

entrant; or (8) an alien who has been battered or subjected to extreme cruelty in the U.S. by a U.S. citizen or legal permanent resident spouse or parent, or by a member of the spouse or parent's family living in the same household, or is the parent or child of a battered person. BEM 225, p 3.

Acceptable status for FAP benefits includes: (1) a qualified alien who was lawfully residing in the U.S. on August 22, 1996, and was 65 years of age or older on August 22, 1996 [BEM 225, p 10]; (2) persons who have lived in the U.S. as a qualified alien for at least five years since their date of entry [**Note:** An alien who is eligible for FAP under a status that doesn't require five years U.S. residence who later adjusts to a status that is subject to the five-year limit continues to be eligible]; and (3) a qualified alien who is under 18 years of age. BEM 225, p 11.

A person is (or was) lawfully residing in the U.S. if he or she meets (or met) one of the following criteria: (1) is a qualified alien; (2) has been inspected and admitted to the U.S. and has not violated the terms of the status under which the individual was admitted or to which he or she has changed after admission; (3) has been paroled into the U.S. pursuant to Section 212(d)(5) of the INA for at least one year or was either: (a) paroled for deferred inspection or pending exclusion proceedings under 236(a) of the INA; (b) paroled into the U.S. for prosecution under 8 CFR 212.5(a)(3); (4) is in temporary resident status under Section 210 or 245A of the INA; (5) is under temporary protected status under Section 244A of the INA; (5) is a family unity beneficiary under Section 301 of P.L. 101-649, as amended; (6) is under deferred enforced departure pursuant to a decision made by the president of the United States; (7) is in deferred action status pursuant to service operations instructions at OI 242.1(a)(22); (8) is the spouse or child of a U.S. citizen whose visa petition has been approved and who has a pending application for adjustment of status; (9) is an applicant for asylum under Section 208(a) of the INA; (10) is an applicant for withholding of deportation under Section 243(h) of the INA who has been granted employment authorization; (11) is an applicant for asylum or withholding of deportation who is under the age of 14 and has had an application pending for at least 180 days. BEM 225, pp 11-12.

BEM 225, page 20 requires the Department verify the alien status of each non-citizen for all programs. The Department must verify each of the following dates **if** they affect an alien's eligibility: (1) date of entry into the U.S.; (2) date asylum was granted under INA Section 208; (3) date deportation (removal) was withheld under INA Section 241(b)(3) or 243(h); and (4) ORR certification/eligibility date for victims of trafficking. **Note:** The client's statement about a date is verification in certain circumstances. BEM 225, p 20. Policy requires the Department disqualify a person, for FAP, who is unable to obtain verification or refuses to cooperate in obtaining it. BEM 225, p 20.

Here, the Department argues that it properly denied Claimant's application for FAP benefits because he is not eligible due to his non-immigrant alien status. The Department represented who testified at the hearing stated that federal government officials have confirmed that Claimant was not a legal resident of the U.S. Claimant, on the other hand, testified that he did not know his current status, but that if he was subject to deportation, the government would have already done so. Claimant stated

that he is actively disputing the deportation proceedings. According to Claimant, because he has not yet been deported, he is currently entitled to FAP benefits. Claimant's witness also provided similar testimony.

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 September 10, 2012 email from an Immigration and Customs Enforcement (ICE) Deportation Officer to the Department which indicated that Claimant was once a lawful permanent resident (LPR) until he was ordered to be deported. (Exhibit 1, p 32) The ICE Deportation Officer then states in the email that " his current case will not result in granting him LPR status again." (Exhibit 1, p 32) Additional emails in 2012 between department employees indicate Claimant had previously applied for FAP and was denied due to lack of documentation concerning his legal citizenship/alien status. (Exhibit 1, pp 34-38) These series of emails also indicate that Claimant had applied for asylum and that his permanent resident card was taken due to criminal activity. (Exhibit 1, pp 35-36) Recent correspondence from ICE (July, 2015) shows that: (1) Claimant is still not a citizen of the U.S.; (2) he is still an applicant for status; and (3) his status has not changed. (Exhibit 1, p 27)

The evidence shows that Claimant is not eligible for FAP benefits under BEM 225. There is no dispute in the record that Claimant is not a lawful resident of the U.S. and that he is currently subject to a deportation order without approval for asylum or deportation withholding. Claimant does not meet the requirements of acceptable status nor is he a qualified alien for purposes of BEM 225. The record also shows that Claimant fails to meet the criteria listed on BEM 225, pp 11-12. Claimant, at the hearing, did not challenge the Department's assertions nor did he object to the document evidence in this case. Accordingly, the material, substantial, and competent evidence on the whole record demonstrates that Claimant 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, finds that the Department acted in accordance with Department policy when it denied Claimant's application for FAP benefits due to his failure to meet the citizenship/alien status requirements set forth in BEM 225.

DECISION AND ORDER

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



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Human Services

Date Signed: 9/18/2015

Date Mailed: 9/18/2015

CAP/las

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:

