

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

IN THE MATTER OF:

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Reg. No.: 15-013767
Issue No.: 3001; 4001; 5001
Case No.: ██████████
Hearing Date: September 17, 2015
County: Macomb-District 36

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 17, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included ██████████, Hearing Facilitator.

ISSUE

Did the Department properly deny Claimant's July 17, 2015 application for Food Assistance Program (FAP), State Disability Assistance (SDA) and State Emergency Relief (SER) assistance due to ineligible 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 entered the United States from ██████████ and ██████████ in ██████████.
2. In 2014, he filed an I-360, Petition for Amerasian, Widow(er) or Special Immigrant with the United States Citizenship and Immigration Services (USCIS), alleging that he was the battered spouse of a U.S. citizen or legal permanent resident (Exhibit C).
3. On July 6, 2015, USCIS approved Claimant's petition and an initial grant of deferred action (Exhibits B and 1). The Supplemental Notice of Deferred Action identified Claimant's "A Number."

4. On July 17, 2015, Claimant applied for FAP, cash assistance, and SER assistance with heat and mortgage/land contract.
5. On July 22, 2015, the Department sent Claimant a Notice of Case Action denying his application for FAP and cash assistance on the basis that he was an ineligible alien.
6. On July 22, 2015, the Department sent Claimant a SER Decision Notice denying his application for SER assistance with heat and mortgage/land contract on the basis that he was an ineligible alien.
7. On July 27, 2015, Claimant filed a request for hearing disputing the Department's actions.

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 U.S.C 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 State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

The State Emergency Relief (SER) program is established by the Social Welfare Act, MCL 400.1-.119b. The SER program is administered by the Department (formerly known as the Department of Human Services) pursuant to MCL 400.10 and Mich Admin Code, R 400.7001-.7049.

As a preliminary matter, it is noted that Claimant applied for FAP, cash assistance and SER benefits. Qualifying individuals are eligible for cash assistance under the State Disability Assistance (SDA) program if disabled or under the Family Independence Program (FIP) if caring for a minor child. BEM 214 (July 2014), p. 1; BEM 210 (July 2015), p. 1. When an individual applies for cash assistance, the Department must determine the group composition and consider the client's eligibility for cash assistance

in the following order: FIP, then Refugee Cash Assistance (RCA), and then SDA. BEM 209 (July 2013), p. 1.

In this case, the Department testified that Claimant indicated on his application that he was disabled and did not indicate that he was the caretaker of any minor children. Claimant did not dispute this testimony. Accordingly, Claimant's eligibility for cash assistance under the SDA program is considered.

Claimant argues that he is eligible for Department benefits because he is the battered spouse of a U.S. citizen or permanent resident. An alien is considered a battered alien if all of the following conditions are met:

- The USCIS or the Executive Office of Immigration Review (EOIR) has granted a petition or found that a pending petition sets forth a prima facie case that the alien is eligible for legal permanent residents status (LPR) by way of being . . . [a] battered alien, or the alien parent of a battered child, or the alien child of a battered parent.
- The abuse was committed by the alien's spouse or parent, or by a member of the spouse or parent's family residing in the same household as the alien, and the spouse or parent consented to such battery or cruelty (and if the victim was the alien's child, the alien did not participate in or condone the abuse).
- There is a substantial connection between the battery or extreme cruelty and the need for assistance.
- The battered alien, child or parent no longer lives in the same household as the abuse.

BEM 225, pp. 8-9.

BEM 225 does not identify acceptable verification sources for battered spouses. However, it provides that any alien status may be verified through either of the following:

- a G-641 annotated at the bottom by a USCIS representative (although it appears that the correct form is currently the G-845; see <http://www.USCIS.gov/portal/site/USCIS/menuitem>). The G-845 form contemplates completion by agencies.
- information from the USCIS Records Section, 333 Mt. Elliott, Detroit, Michigan 48207.

BEM 225, p 23.

Furthermore, Department policy anticipates that the Department will use the Systematic Alien Verification for Entitlements (SAVE) program to assist in determining a noncitizen applicant's immigration status. BEM 225A (July 2013), p. 1. SAVE validates the verification information obtained from the noncitizen client at three levels. BEM 225A, p.

1. If the initial verification at Level 1 cannot conclusively determine the alien status electronically, verification proceeds to Level 2. BEM 225A, p. 2. If clarification or further information is submitted, Level 2 prompts SAVE to perform a manual search by requesting a G-845 from SAVE; resolution may take 3 to 5 federal working days. BEM 225A, pp. 1-2. When Level 2 verification cannot conclusively determine the individual's alien status due to interference in the interface with SAVE, the verification process proceeds to Level 3 and the Department must send the G-845 and copies of the client's documentation to USCIS. BEM 225A, p. 3.

In this case, Claimant presented an I-797 Notice of Action to the Department with his application. An I-797 is a USCIS document regarding alien status. BEM 225, pp. 34-35. The I-797 provided by Claimant showed that his I-360 Petition for Amerasian, Widow(er) or Special Immigrant was approved by the USCIS and shows that Claimant was the self-petitioning spouse of a U.S. citizen or LPR, with a priority date of March 26, 2008 (Exhibit B). It also provided that he was granted a deferred action, which meant that USCIS did not anticipate instituting action for removal at this time and that he could apply for employment authorization (Exhibit 1).

The evidence presented by Claimant was sufficient to establish that he was a battered spouse of a U.S. citizen or LPR. The Department testified that it was unable to use the SAVE process to verify Claimant's alien status because Claimant did not have a permanent resident or I-94 card. However, under BEM 225A, when alien status cannot be determined electronically at Level 1, the Department must seek secondary verification at Level 2. In the absence of any evidence by the Department that it had obtained evidence through SAVE that Claimant did not qualify as a battered spouse, the Department did not act in accordance with Department policy when it concluded that Claimant was not a battered spouse under BEM 225.

Aliens who have been battered or subjected to extreme cruelty in the U.S. by a U.S. citizen or LPR spouse, verified in accordance with BEM 225, are eligible for SER. ERM 202 (June 2015), pp. 1-2. Because Claimant has established that he qualified as a battered alien under BEM 225, the Department did not act in accordance with Department policy when it denied his July 17, 2015 SER application for assistance with heat and mortgage/land contract on the basis of ineligible alien status.

To be eligible for FAP or SDA benefits, an alien must have an acceptable alien status. BEM 225 (October 2014), p. 1. For FAP, acceptable alien status includes an alien who has been battered or subjected to extreme cruelty in the U.S.; however, a battered alien admitted into the U.S. on or after August 22, 1996 must also establish that he has been in the U.S. for more than five years or meet other eligibility criteria if he has been in the U.S. for less than five years. BEM 225, pp. 8, 31-33.

In this case, Claimant testified that he had been in the U.S. since 2004, first as a visitor, then as a student. A Visa showing a June 15, 2004 issue date was admitted into evidence (Exhibit E). He testified that he married a U.S. citizen/LPR in 2007.

Therefore, Claimant established that he was living in the U.S. for more than five years. Because he was a battered spouse and had lived in the U.S. more than five years, he was eligible for FAP benefits, and the Department did not act in accordance with Department policy when it denied his July 17, 2015 application for FAP benefits due to ineligible alien status.

Battered aliens do not have acceptable status for SDA; acceptable status for aliens' receipt of SDA benefits is limited to the following individuals:

1. aliens on active duty in, or honorably discharged from, the U.S. armed forces, or the alien spouse or unmarried alien dependent child of a qualified military alien;
2. holders of one of the following immigration statuses;
 - a. permanent resident alien with class code RE, AS, SI or SQ on the I-551 (former refugee or asylee);
 - b. Refugee admitted under INA Section 207;
 - c. Granted asylum under INA Section 208;
 - d. Cuban/Haitian entrant;
 - e. Amerasian under P.L. 100-202 (class code AM on the I-551);
 - f. Victim of trafficking under P.L. 106-386 of 2000;
 - g. Alien whose deportation (removal) is being withheld under INA Sections 241(b)(3) or 243(h).
3. persons admitted into the U.S. prior to August 22, 1996 with a permanent resident alien class code on the I-551 other than RE, AM or AS or paroled into the U.S. for at least one year under INA Section 212(d)(5);
4. aliens granted conditional entry under INA section 203(a)(7);
5. permanent resident aliens with an I-151, Alien Registration Receipt Card;
6. permanent resident aliens (regardless of code) meeting the social security credits;
7. qualified aliens (which includes battered aliens) lawfully residing in the U.S. now who received Supplemental Security Income (SSI) on August 22, 1996;
8. qualified aliens (which includes battered aliens) lawfully residing in the U.S. on August 22, 1996, and now blind or disabled according to SSI standards.

BEM 225, pp. 5-6, 6-7, 32- 33.

Based on the evidence presented at the hearing, Claimant does not have acceptable alien status for SDA eligibility. Therefore, the Department properly denied Claimant's SDA application.

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 SDA application but did

not act in accordance with Department policy when it denied his FAP and SER application.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to denial of the SDA application and **REVERSED IN PART** with respect to denial of the FAP and SER applications.

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. Reregister Claimant's July 17, 2015 application and reprocess for FAP and SER eligibility;
2. Provide Claimant with FAP and SER benefits he is eligible to receive, if any, from July 17, 2015 ongoing; and
3. Notify Claimant in writing of its decision.



Alice C. Elkin
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **9/25/2015**

Date Mailed: **9/25/2015**

ACE / tlf

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:

[REDACTED]