

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

IN THE MATTER OF:

██████████
██████████
████████████████████

Reg. No.: 15-004097
Issue Nos.: 2001; 3001
Case No.: ██████████
Hearing Date: May 4, 2015
County: Oakland (03-Southfield)

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 May 4, 2015, from Detroit, Michigan. Participants on behalf of Claimant included ██████████
████████████████████ Participants on behalf of the Department of Health and Human Services (Department) included ██████████
██████████

ISSUES

1. Did the Department properly conclude that Claimant and her husband were eligible for Emergency Services Only (ESO) benefits under the Medical Assistance (MA) program?
2. Did the Department properly deny Claimant's February 4, 2015, Food Assistance Program (FAP) application?

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 February 4, 2015, Claimant and her husband applied for FAP and MA.
2. Claimant submitted two permanent residency cards for herself, one showing that she had been a US resident since November 2011 and another showing she had been a resident since January 2009, and two permanent residency cards for her husband, one showing that he had been a US resident since November 2011 and another showing he had been a resident since November 2009.

3. On February 10, 2015, the Department sent Claimant (i) a Health Care Coverage Determination Notice notifying her that she and her husband were eligible for ESO MA and (ii) a Notice of Case Action denying Claimant's FAP application.
4. On February 18, 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 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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

As a preliminary matter, it is noted that, although the file did not include the AHR's authorization to act on behalf Claimant and her husband, the AHR's parents, the Department testified that it had authorization in its possession and faxed a copy of the documentation. Therefore, the AHR is found to have authority to represent Claimant and her husband.

Although the hearing request did not clearly indicate what programs were at issue and the Department addressed only the MA program, the AHR testified that a hearing was requested with respect to the MA and FAP programs. The evidence at the hearing established that Claimant had applied for both MA and FAP on February 4, 2014, and that on February 10, 2014, the Department sent Claimant both a Health Care Coverage Determination Notice approving ESO MA for Claimant and her husband and a Notice of Case Action denying the FAP application. Because Claimant's hearing request was filed on February 18, 2015, after both notices were sent, it is found that Claimant's

hearing request concerned both programs. The hearing proceeded to address the Department's actions concerning Claimant's FAP and MA applications.

The Department testified that Claimant and her husband were limited to ESO MA coverage because they were not eligible aliens for full-coverage MA. Although the Department did not provide the relevant Notice of Case Action concerning Claimant's FAP application, the Department testified that Claimant's FAP application was denied because neither she nor her husband were eligible aliens.

To be eligible for full MA coverage, a person must be a U.S. citizen or an alien admitted to the U.S. under a specific immigration status. BEM 225 (October 2014), p. 2. Department policy provides that an individual who is a permanent resident alien with a class code on the permanent residency card other than RE, AM or AS is eligible for ESO MA coverage only for the first five years in the U.S. unless the alien is a qualified military alien or the spouse or dependent child of a qualified military alien. BEM 225, pp. 7-8, 30; Department of Community Health, Modified Adjusted Gross Income (MAGI) Related Eligibility Manual (MREM), § 3.6. A qualified military alien is a qualified alien on active duty in, or veteran honorably discharged from, the U.S. Armed Forces. BEM 225, p. 5; MREM, § 3.6.

To receive FAP benefits, a person must be a U.S. citizen or have an acceptable alien status, and individuals who do not meet this requirement are disqualified from FAP eligibility. BEM 225, p. 1. Acceptable alien status includes individuals who are permanent resident aliens and meet one of the following criteria: (i) have been in the U.S. for five years; (ii) meet the Social Security Credits (SSC) requirements; (iii) have permanent residency cards (I-551) with a class code of RE, AS, SI, AM or SQ; (iv) are under 18 years of age; or (v) are lawfully residing in the United States and disabled. BEM 225, pp. 3-4, 6-7, 9-11. For purposes of BEM 255, disabled means receiving SSI, RSDI, MA or Railroad Retirement benefits based on disability or blindness, a qualifying veteran or qualifying spouse or child of a veteran. BEM 255, pp. 10-11.

In this case, the AHR relied on the fact that Claimant and her husband were permanent resident aliens in the US for more than five years in establishing acceptable alien status eligibility for full-coverage MA and FAP. The Department testified because Claimant submitted two permanent residency cards for herself, one showing that she had been a resident since November 2011 and another showing she had been a resident since January 2009, and two permanent residency cards for her husband, one showing that he had been a resident since November 2011 and another showing he had been a resident since November 2009, it was required to rely on the permanent resident card showing the most recent date of residency for Claimant and her husband, which was November 2011. The Department concluded that, based on having residency since November 18, 2011, Claimant and her husband were not permanent residents for five years as of their February 4, 2015, application.

For permanent resident aliens with class codes other than RE, AM, AS, SI or SQ, the date of entry is the Date of Adjustment/Admission on the I-551 (permanent residency card). BEM 225, p. 29. The Department is required to verify a noncitizen applicant's eligibility for public benefits through the Systematic Alien Verification for Entitlements (SAVE) Program. 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 U.S. Citizenship and Immigration Services. BEM 225A, p. 3.

In this case, the Department worker testified that Claimant's and her husband's alien status had been verified in accordance with BEM 225A, but no evidence was presented at the hearing to establish the results of the SAVE inquiry. Furthermore, based on the two permanent residency cards each issued to Claimant and her husband with conflicting dates of entry, it appears that the SAVE inquiry would need to proceed beyond Level 1. In the absence of any evidence that the Department obtained a SAVE response and made an inquiry to resolve the conflicting documentation provided by Claimant, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it approved Claimant and her husband for ESO MA and denied the FAP application.


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. Reregister and reprocess Claimant's February 4, 2015, MA and FAP application;
2. Provide Claimant and her husband with MA coverage they are eligible to receive from the date of application ongoing;
3. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from February 4, 2015 ongoing; and

4. 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: **5/6/2015**

Date Mailed: **5/7/2015**

ACE / pf

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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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