

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 2011187

Issue No: 3019



Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on June 24, 2010. After due notice, a telephone hearing was held on Tuesday, October 26, 2010.

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's Food Assistance Program (FAP) eligibility?

FINDINGS OF FACT

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

1. The Claimant is an ongoing FAP recipient.
2. The Claimant resides in a group home.
3. On June 14, 2010, the Department notified the Claimant that it would terminate FAP benefits as of July 1, 2010. The Department alleged that the Claimant was not eligible for FAP benefits due to his institutional status in a for profit facility.
4. The Department relied solely on a succinct, hearsay memorandum dated June 10, 2010, regarding one telephone contact between an employee of [REDACTED] and someone from the [REDACTED], neither of whom were available to testify during the hearing.

5. The [REDACTED] Inc. testified credibly on the Claimant's behalf.
6. The Claimant's representative offered a memo from the [REDACTED] which indicates that [REDACTED] is a non-profit entity.
7. [REDACTED] sits on a real property solely owned by [REDACTED]
8. [REDACTED] is fully managed by [REDACTED], which includes actions like hiring/firing/supervising all staff, issuing all paychecks, paying all structural/maintenance/utility bills, etc.
9. [REDACTED] is named as the only Lessee of the existing rental contract between the Claimant and that corporation, which verifies the Claimant's ongoing shelter expense is approximately [REDACTED] per month.
10. The Department received the Claimant's request for a hearing on June 24, 2010, protesting the termination of his FAP benefits.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp program, is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or Department), administers the FAP program pursuant to MCL 400.10, et seq., and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

The Department has the burden of proving that its actions were a proper application of its policies. The Department had a duty to present the following:

- An explanation of the action(s) taken.
- A summary of the policy or laws used to determine that the action taken was correct.
- Any clarifications by central office staff of the policy or laws used.
- The facts which led to the conclusion that the policy is relevant to the disputed case action.
- The DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. BAM 600

In order to be eligible for FAP as an AFC home resident, the home must be nonprofit and licensed for 16 or fewer residents. Nonprofit means IRS tax exempt. BEM 615. Adult Foster Care (AFC) homes must be properly licensed by the DHS Bureau of Children and Adult Licensing in order for initial FAP eligibility to exist. BEM 615. In this case, the Department did not present documentary evidence during the hearing to verify that any such license exists.

In order to be eligible for FAP in a properly licensed AFC home, the home must be nonprofit, which means IRS tax exempt. The Claimant's witness testified that Hemlock Place is tax exempt because it derives that status from the umbrella corporation which owns and operates it (Residential Options, Inc.).

Involvement by CMH/DCH nearly always exists in these types of supported community living facilities, which were created to enable disabled people like the Claimant to live more independently. The Department's policy strictly forbids the Department from allowing any CMH/DCH shelter expense contribution as a shelter expense deduction when calculating an AFC resident's monthly FAP allotment. The applicable policy states: "Allow only the client's portion of a shelter expense in these situations." BEM 615. This issue was not explored at hearing; however, it becomes relevant now because, this Administrative Law Judge finds the Department prematurely proposed FAP case closure, without verification of the Claimant's actual shelter obligation, which includes determining/verifying what portion he pays toward medical care, and what portion he pays for shelter via a statement from the AFC home operator (Residential Options, Inc.) The Claimant's FAP case must remain open until the Department conducts a proper redetermination, in accordance with BAM 130/210 and BEM 615 and 617.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department failed to establish that it properly terminated the Claimant's FAP benefits.

Accordingly, the Department's FAP eligibility determination is REVERSED. It is further ORDERED that the Department shall:

1. Initiate a determination of the Claimant's eligibility for FAP as of July 1, 2010.
2. Allow the Claimant the opportunity to clarify whether the group home where the Claimant resides is a nonprofit entity.
3. Provide the Claimant with written notification of the Department's revised eligibility determination.
4. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.

/s/ _____
Kevin Scully
Administrative Law Judge
for Duane Berger, Director
Department of Human Services

Date Signed: _1/20/11_____

Date Mailed: _1/20/11_____

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

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