

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

IN THE MATTER OF:

[REDACTED]

Reg No. 2011275
Issue No. 3019
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: December 1, 2010
Ingham County DHS

ADMINISTRATIVE LAW JUDGE: Marlene B. Magyar

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, an in-person hearing was held on December 1, 2010. Claimant did not appear; however, he was assisted by [REDACTED].

ISSUE

Did the department properly propose to close claimant's Food Assistance Program (FAP) case, effective July 1, 2010?

FINDINGS OF FACT

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

1. Claimant is a 23-year-old, developmentally disabled adult with low-functioning Autism (no speech capacity) and ongoing Seizure Disorder who requires close and constant personal/domiciliary care.
2. Claimant currently resides in an adult foster care home (AFC) with two other individuals of similar affliction.
3. At all times relevant, claimant was receiving a monthly FAP allotment ([REDACTED]).

4. On June 14, 2010, the department notified the Director who oversees claimant's residence ([REDACTED]) that his FAP case was being proposed for closure based on the understanding [REDACTED] operates independently as a "for profit" business (Department Exhibit #1, pgs 1-3.
5. In response, a timely hearing request was filed on claimant's behalf to dispute that allegation; consequently, the proposed closure was deleted pending issuance of this Hearing Decision.
6. Claimant's hearing was held in the [REDACTED] office on December 1, 2010.
7. The department's only witness/presenter submitted absolutely no documentary verification to support the proposed case closure.
8. 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 Office of Inspector General (OIG), neither of whom appeared or testified at the hearing (Department Exhibit #1, pg 1).
9. By contrast, the [REDACTED] testified credibly on claimant's behalf.
10. This witness is qualified as an expert in the business/managerial/day-to-day operations of the above-referenced corporation, as well as in [REDACTED] relationship to said corporation.
11. [REDACTED] sits on a real property solely owned by [REDACTED]
12. [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.
13. Additionally, [REDACTED] is named as the only Lessee of the existing rental contract between claimant and that corporation, which verifies claimant's ongoing rental expense is approximately [REDACTED] per month.
14. Lastly, the parties stipulated on the record at hearing [REDACTED] [REDACTED] is a tax exempt, nonprofit corporation under the existing federal tax code.

CONCLUSIONS OF LAW

The department's policy in BEM Item 615 (pgs 1-4) expressly allows residents of certain group living facilities access to potential FAP eligibility. Additionally, the department's policy in BEM Item 617 (pgs 1-7) explicitly sets forth specific eligibility and budgeting rules which must be followed when determining an AFC resident's eligibility and benefit level.

First and foremost, AFC homes must be properly licensed by the DHS Bureau of Children and Adult Licensing in order for initial FAP eligibility to exist. BEM Item 615, pg 1. In this case, the department presented no documentary evidence at hearing to verify any such license exists.

Secondly, in order to be eligible for FAP in a properly licensed AFC home the home must be nonprofit, which means IRS tax exempt. Claimant's witness seemed to confirm [REDACTED] is tax exempt because it derives that status from the umbrella corporation which owns and operates it [REDACTED].). However, no written verification was requested by the department prior to the proposed FAP closure to verify this necessary requirement has been met.

Lastly, BEM Item 615, pg 2 states [REDACTED] involvement nearly always exists in these types of supported community living facilities which were created to enable disabled people like claimant to live more independently. Also, the department's policy strictly forbids the department from allowing any [REDACTED] shelter expense contribution as a shelter expense deduction when calculating an AFC resident's monthly FAP issuance amount. Specifically, the applicable policy states: "Allow **only** the client's portion of a shelter expense in these situations." BEM Item 615, pg 2. This issue was not explored at hearing; however, it becomes relevant now because, based on the credible, expert testimony presented, this Administrative Law Judge finds the department prematurely proposed FAP case closure, without verification of 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 [REDACTED].(See also BAM Item 130-Verification Policy). Put simply, claimant's FAP case must remain open until the department conducts a proper redetermination, in accordance with BAM Items 130/210 and BEM Items 615 and 617.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the department improperly proposed to close claimant's FAP case, effective July 1, 2010.

Accordingly, the department's proposed action is REVERSED, and it is Ordered:

1. A FAP redetermination shall be initiated in January 2011 in accordance with the above-stated departmental policy.
2. IRS tax exempt status and claimant's portion of the monthly rental expense must be verified.

/s/

Marlene B. Magyar
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: December 13, 2010

Date Mailed: December 13, 2010

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.

MBM/db

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