

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2012-54414
Issue No.: 3019
Case No.: [REDACTED]
Hearing Date: June 21, 2012
County: Bay

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on June 21, 2012, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] ([REDACTED]). Participants on behalf of Department of Human Services (Department) included [REDACTED] Eligibility Specialist).

ISSUE

Did the Department properly deny Claimant's application for Food Assistance Program (FAP) benefits because Claimant lived in a facility that does not meet acceptable group living facility criteria?

FINDINGS OF FACT

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

1. In April, 2012, Claimant resided at the [REDACTED], an assisted living facility.
2. On April 12, 2012, Claimant submitted an Assistance Application (DHS-1171) seeking FAP benefits.
3. On May 3, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied the application and indicated, ". . . as per our policy BEM 615/617 the facility you are living at does not meet the acceptable group living criteria. Clients residing at this facility are not eligible for food assistance." [sic]

4. On May 23, 2012, Claimant requested a hearing to challenge the denial of his FAP application.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp (FS) 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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and Mich Admin Code, R 400.3001 through R 400.3015.

Residents of certain group living facilities can qualify for FAP. BEM 615. BEM 615 defines these facilities and the programs residents may be eligible for. Unless otherwise stated in BEM 615, a facility is not permitted to accept food assistance benefits for meals served to its residents. BEM 615. Clients may use their food assistance benefits for purchases at regular outlets. BEM 615.

According to BEM 615 for FAP purposes, [REDACTED] (AFC) homes must be licensed by the DHS Bureau of Children and Adult Licensing (BCAL) to offer either, or both, of the following levels of care: (1) domiciliary care which includes meals, lodging, and supervision of basic living activities, such as eating, bathing and dressing and (2) personal care which includes meals, lodging, supervision and personal assistance in basic daily living activities. BEM 615.

In order to be eligible for FAP as an AFC home resident, the home must be nonprofit and licensed for 16 or fewer residents. BEM 615. Nonprofit means IRS tax exempt. BEM 615.

The local office must determine if the group living facility is acceptable before certifying eligibility for residents. BEM 615. Policy requires the Department obtain a copy of the facility's license. BEM 615. If the facility cannot provide a copy of its license, the license status for a Substance Abuse Treatment Center (SAT) or Long Term Care facility (LTC) is available from DCH and for Home for the Aged (HFA) is available from OCAL.

Here, the Department denied Claimant's application for FAP benefits based on BEM 615 and/or BEM 617. According to the Department, Claimant's assisted living facility arrangements do not meet with the requirements set forth the above-mentioned policies. Claimant, on his application, indicated that he resided at the Auburn Care Center, which is an assisted living center. At some point, the Auburn Care Center was sold and now operates as "Professional Assisted Living." The record shows that Claimant, during the relevant time period, resided at Professional Assisted Living, which is an unlicensed assisted living facility or a community living facility. The facility is clearly not an AFC home. Claimant rents an apartment in the facility and the facility contracts

with outside companies to provide home care services. There is no evidence in this record that the assisted living facility where Claimant resides accepts clients based on a sliding fee scale. The facility does not serve meals to its residents. Based on this record, it is apparent that Claimant's housing facility functions similar to an apartment complex except that it contracts with organization that conducts assessments and provide home care when needed.

The Department representative who attended the hearing did not argue that this facility was a LTC facility or a HFA institution. Rather, the Department's position was based on an internal email correspondence requesting a policy clarification. The email indicated that the clients at the facility that are on Medicaid "are being given the option of applying for FAP benefits and then have their food purchased & prepared separately from other residents that are paying room and board." This Administrative Law Judge has reviewed the email correspondence and does not believe that the individual who opined that the facility does not meet the acceptable group living facility criteria under BEM 615 & 617 had sufficient information. Further, this Administrative Law Judge has not found any evidence in this record that Claimant's assisted living care facility is covered under BEM 615 or BEM 617.

Based on the material, competent and substantial evidence on the whole record, this Administrative Law Judge finds that the Department should not have denied Claimant's FAP application based on his living facility. Based on the evidence presented in this case, Claimant's assisted living facility is not unlike an apartment complex. The Department did not have enough information about Claimant's living facility to deny Claimant's application on the basis that this assisted living facility did not meet the criteria set forth in BEM 615 and BEM 617.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, finds that the Department did not act properly when it denied Claimant's application for FAP because Claimant lived in a facility that does not meet acceptable group living facility criteria.

Accordingly, the Department's FAP decision is REVERSED.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reprocess Claimant's FAP application back to the date of closure.
2. Initiate a redetermination of Claimant's living arrangements and, if necessary, conduct an investigation or fact-finding regarding Claimant's residence or "assisted living facility."

IT IS SO ORDERED.

/s/

C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 7/2/12

Date Mailed: 7/2/12

NOTICE: Michigan Administrative Hearing System (MAHS) 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. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CAP/DS

