

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

IN THE MATTER OF:

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

Reg. No.: 2014 13615
Issue No.: 3001
Case No.: ██████████
Hearing Date: December 16, 2013
County: Wayne (31)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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. After due notice, a telephone hearing was held on December 16, 2013, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant's Guardian, ██████████. The Claimant did not appear. Participants on behalf of the Department of Human Services (Department) included ██████████, FIM, and ██████████, ES.

ISSUE

Did the Department properly deny Claimant's application close Claimant's case for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP)? | <input type="checkbox"/> State Disability Assistance (SDA)? |
| <input checked="" type="checkbox"/> Food Assistance Program (FAP)? | <input type="checkbox"/> Child Development and Care (CDC)? |
| <input type="checkbox"/> Medical Assistance (MA)? | <input type="checkbox"/> Direct Support Services (DSS)? |
| <input type="checkbox"/> Adult Medical Assistance (AMP)? | <input type="checkbox"/> State SSI Payments (SSP)? |

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 applied for received:
 FIP FAP MA AMP SDA CDC DSS SSP
benefits.

2. On November 4, 2013, the Department denied Claimant's application closed Claimant's case due to the Claimant residing in a Long Term Care facility.
3. On November 4, 2013, the Department sent Claimant/Claimant's Authorized Representative (AR) its decision.
4. On November 13, 2013, Claimant/Claimant's Authorized Hearing Representative (AHR) filed a hearing request, protesting the Department's actions.

CONCLUSIONS OF LAW

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

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food Stamp Act of 1977, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

Additionally, the issue in this case is whether the Claimant, who is a resident of a long term care facility (████████████████████), is eligible for Food Assistance. The Claimant's Guardian applied on Claimant's behalf for food assistance so that supplemental food could be purchased for the elderly Claimant's liquid diet. The Department closed the Claimant's FAP case because the Claimant resides in a long term care facility which provides her meals. The Department cited Department policy found in BEM 615 which provides:

SDA and FAP Only

Residents of certain group living facilities can qualify for State Disability Assistance (SDA) and/or Food Assistance Program (FAP). This item defines these facilities and the programs residents may be eligible for. BEM 616 and 617 provide special eligibility and budgeting rules. BAM 430 has instructions for authorizing payments to facilities. BEM 615, pp1, (7/1/13)

FAP Only

Unless otherwise stated in this item, a facility is **not** permitted to accept food assistance benefits for meals served to its residents. Clients may use their food assistance benefits for purchases at regular outlets. Pp. 1

**Long-Term
Care (LTC)
Facility**

SDA Only

LTC facilities must be licensed by DCH. Typically, such a facility provides meals, lodging and some level of medical care, for which Medicaid funding is received. Eligible residents receive the **incidentals allowance only**. See Long-Term Care in BPG Glossary, for types of facilities that qualify. BEM 615 pp.4 (7/1/13)

In order to qualify for Food Assistance the requirements of BEM 212 regarding Food Assistance group composition must also be consulted. BEM 212 provides that to determine if an individual is eligible for FAP the relationships of the persons who live together must be determined and whether they purchase and prepare food together as a group.

**FOOD
PURCHASE
AND
PREPARATION**

The phrase, purchase and prepare together, is meant to describe persons who customarily share food in common.

Persons customarily share food in common if:

- They each contribute to the purchase of food.
- They share the preparation of food, regardless of who paid for it.
- They eat from the same food supply, regardless of who paid for it.

In general, persons who live together and purchase and prepare food together are members of the FAP group.

Living with means sharing a home where family members usually sleep and share **any** common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share **only** an access area such as an entrance or hallway or non-living area such as a laundry room are **not** considered living together.

LIVING SITUATIONS

The following policies describe living situations which create ineligibility for FAP or which must meet specific requirements to allow eligibility. BEM 212, pp.7 (10/1/13)

Residents of Institutions

A person is a resident of an institution when the institution provides the majority of his meals as part of its normal services.

Residents of institutions are **not** eligible for FAP unless one of the following is true:

- The facility is authorized by the Food and Consumer Service to accept FAP benefits.
- The facility is an eligible group living facility; see BEM 615. BEM 212, pp. 8, (10/1/13)

Clearly the Claimant, as a resident of a long term care facility, is not a member of a FAP group who customarily shares food in common as the claimant does not contribute to the purchase or preparation of the food in her LTC facility. Nor does the Claimant share a home where family members live and share common facilities. Based upon this policy the Claimant does not fit the definition of an eligible group member.

Lastly the Claimant's LTC facility as an institution provides the Claimant's meals in total as part of normal services, thus the only exception being if the LTC facility is eligible under BEM 615.

BEM 615 provides that residents of certain facilities may be eligible for FAP benefits only if the facility is listed as eligible for FAP. BEM 615 notes that residents of long term care facilities are only eligible for SDA and is specifically silent regarding FAP benefits and therefore, read together, it is determined that the Department correctly closed the Claimant's FAP case as she is determined not eligible to receive FAP benefits as a LTC resident according to Department Policies cited above.

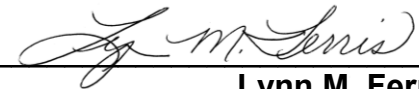
The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department

acted in accordance with Department policy when it closed the Claimant's FAP case as the Claimant was a long term care facility resident who is not eligible to receive FAP benefits.

DECISION AND ORDER

Accordingly, the Department's decision is

AFFIRMED.



Lynn M. Ferris
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: December 19, 2013

Date Mailed: December 19, 2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

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).

A Request for Rehearing or Reconsideration may be granted 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 Department, AHR or the claimant 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 the hearing decision is mailed.

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 48909-07322

LMF/cl

2014-13615/LMF

cc:

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