

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201312236
Issue No.: 3008, 3014
Case No.: [REDACTED]
Hearing Date: March 5, 2013
County: SSPC-West

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 March 5, 2013 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Assistance Payments Worker).

ISSUE

Did the Department properly determine Claimant's Food Assistance Program (FAP) group composition?

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 FAP on September 28, 2012.
2. Claimant was interviewed on October 9, 2012. During the interview, Claimant stated that she had other roommates, but that she did not live in an AFC home.
3. Following the interview, the Department had questions about Claimant's living arrangement, proper FAP group size and composition.
4. On October 19, 2012, the Department requested a Front End Eligibility (FEE) investigation by the Office of Inspector General (OIG).

5. On October 24, 2012, the OIG Agent conducted a home visit to Claimant's place of residence ([REDACTED]).
6. Following the FEE investigation, the OIG agent determined that Claimant does not prepare her own meals and that her meals are included in the rent. The OIG Agent also found that Claimant does not live in an AFC home.
7. On October 25, 2012, the Department mailed Claimant a Notice of Case Action (DHS-1605) which closed her FAP case effective November 1, 2012 due to ineligibility under BEM 212 because her meals were included in her rent.
8. On November 12, 2012, Claimant requested a hearing to protest the closure.

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.

The Department's computer system known as "Bridges" will help determine who must be included in the FAP group prior to evaluating the non financial and financial eligibility of everyone in the group. BEM 212. FAP group composition is established by determining all of the following: (1) who lives together; (2) the relationship(s) of the people who live together; (3) whether the people living together purchase and prepare food together or separately; and (4) whether the person(s) resides in an eligible living situation. BEM 212.

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. BEM 212. First, the Department must determine if they must be included in the group. BEM 212. If they are not mandatory group members, then the Department must determine if they purchase and prepare food together or separately. BEM 212.

"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. BEM 212. 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. BEM 212.

The phrase, purchase and prepare together, is meant to describe persons who customarily share food in common. BEM 212. Persons customarily share food in

common if: (1) they each contribute to the purchase of food; (2) they share the preparation of food, regardless of who paid for it; (3) they eat from the same food supply, regardless of who paid for it. BEM 212. In general, persons who live together and purchase and prepare food together are members of the FAP group. BEM 212.

Persons who normally purchase and prepare separately maintain that distinction even when they are temporarily sharing food with others. BEM 212. Persons are temporarily sharing food if both of the following are true: (1) they had previously purchased and prepared separately; (2) others are sharing their food until the person: (a) is approved for FAP; (b) qualifies for other cash assistance; (c) secures some other source of income. BEM 212.

Persons residing in a commercial boarding house are not eligible for FAP. BEM 212. A boarder is a person residing in either a commercial boarding house¹ with the FAP group and paying reasonable monthly compensation for meals. BEM 212. Reasonable monthly compensation is: (1) the amount of the maximum monthly FAP benefits for the number of persons making the board payment if the payment is for at least three meals a day; or (2) two-thirds of the maximum monthly FAP benefits for the number of persons making the board payment if the payment is for less than three meals per day. BEM 212. The group providing the board in a noncommercial board situation may choose to include or exclude the boarder(s) from the group. BEM 212. If excluded, the boarder is not eligible for FAP. BEM 212. Persons paying less than reasonable monthly compensation for board must be included in the group providing the board. BEM 212.

A person is a resident of an institution when the institution provides the majority of his meals as part of its normal services. BEM 212. Residents of institutions are not eligible for FAP unless one of the following is true: (1) the facility is authorized by the Food and Consumer Service to accept FAP benefits; (2) the facility is an eligible group living facility (See BEM 615) or (3) the facility is a medical hospital and there is a plan for the person's return home. BEM 212. A "roomer"² may apply for FAP as a separate group. BEM 212.

Residents of certain group living facilities can qualify for State Disability Assistance (SDA) and/or Food Assistance Program (FAP). BEM 615 defines these facilities and the programs residents may be eligible for. BEM 616 and 617 provide special eligibility and budgeting rules. 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.

BEM 615 also covers FAP eligibility for residents of Adult Foster Care (AFC) homes. AFC's 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. This includes

¹ A commercial boarding house is an establishment which provides room and board for compensation. BEM 212. It may or may not be licensed; it is not IRS tax exempt. BEM 212.

² A roomer is a person to whom the group furnishes lodging, but not meals, for compensation. BEM 212.

meals, lodging, and supervision of basic living activities, such as eating, bathing and dressing; (2) personal care. This includes meals, lodging, supervision and personal assistance in basic daily living activities. BEM 615.

Persons residing in an eligible facility as defined in BEM 615 may have to meet special eligibility requirements to receive food assistance benefits. BEM 617. Also, the facility may have certain responsibilities regarding its residents who are food assistance applicants or recipients. BEM 617. The local office must determine if the group living facility is acceptable before certifying eligibility for residents. BEM 617. 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 617. Nonprofit means IRS tax exempt. BEM 617.

Persons participating in the Community Mental Health/Department of Community Health (CMH/DCH) Supported Community Living Program live independently, usually two or three to an apartment. BEM 615. Local CMH or DCH agencies assist these clients or contract with independent agencies to enable residents to live more independently in their own home. BEM 615. Such persons receiving CMH/DCH services are **not** in institutional status. BEM 615. The Department must verify the amount of the client's shelter obligation from the provider. BEM 615. The Department should not calculate the client's portion of the shelter obligation by using the lease agreement and prorating the amount among all of the residents. BEM 615. CMH/DCH contributes toward shelter costs for some of these clients. BEM 615. The Department allows only the client's portion of a shelter expense in these situations. BEM 615.

Here, Claimant characterized her living situation as a "room and board." Claimant resided in a house/apartment with another person. She had her own bedroom but she shared a refrigerator. The record demonstrates that Claimant's meals were included in her rent, which was \$ [REDACTED] per month. According to Claimant, the "main house" provides only breakfast and dinner, but lunch is not provided. However, Claimant stated that she would skip breakfast. The landlord, who owned Claimant's apartment, also owned an adjacent property. Claimant essentially did not dispute these facts, but she stated that only some of her meals were included with the rent. There is no evidence that Claimant resides in an AFC home as it was not licensed per the OIG Agent's report. Claimant's living arrangement does not meet any of the requirements under BEM 615 or 617. Here, Claimant lives in an "institution" as defined by BEM 212. Claimant is a resident of an institution which provides the majority of her meals as part of its normal services. BEM 212. Per BEM 212, residents of institutions are not eligible for FAP unless one of the following is true: (1) the facility is authorized by the Food and Consumer Service to accept FAP benefits; (2) the facility is an eligible group living facility (See BEM 615) or (3) the facility is a medical hospital and there is a plan for the person's return home. BEM 212. The evidence shows that Claimant's house/apartment does not meet either of these criteria.

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 act properly when it closed Claimant's FAP case.

Accordingly, the Department's decision is **AFFIRMED**.

IT IS SO ORDERED.

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

Date Signed: March 8, 2013

Date Mailed: March 11, 2013

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.

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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/cr

cc:

