

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

IN THE MATTER OF:



Reg. No.: 201335685
Issue No.: 3019
Case No.: [REDACTED]
Hearing Date: April 17, 2013
County: Wayne (19)

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

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 April 17, 2013, from Detroit, Michigan. Participants on behalf of Claimant included [REDACTED], Claimant's authorized hearing representative (AHR), and [REDACTED], the AHR's attorney. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Family Independence Manager; [REDACTED], Family Independence Specialist; and [REDACTED], agent with the Office of Inspector General (OIG).

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) case based on its finding that Claimant's residence did not meet the institutional status 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. Claimant, a mentally disabled individual, was an ongoing recipient of FAP benefits.
2. Claimant lives with four other mentally-disabled individuals in a home owned by the AHR.
3. Claimant resides in the home through a month-to-month lease for room and board (Exhibit A).

4. On February 28, 2013, the Department sent Claimant a Notice of Case Action, notifying her that her FAP case would close effective April 1, 2013, because she was "not eligible because of institutional status." (Exhibit 1.)
5. On March 18, 2013, Claimant requested a hearing disputing 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 (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 sent Claimant a February 28, 2013, Notice of Case Action closing her FAP case effective April 1, 2013, because she was "not eligible because of institutional status." At the hearing, the Department explained that Claimant was not eligible for FAP benefits because the group home in which she resided did not meet the requirements for institutions.

An institution is defined as an establishment that furnishes food, shelter and some treatment or services to more than three people unrelated to the proprietor. BEM 265 (July 2012), p 1. A person in a facility which provides its residents a majority of their meals can qualify for FAP if the facility is either (i) authorized by FNS to accept FAP benefits or (ii) an eligible group living facility as defined in BEM 615. BEM 265, p 2; BEM 212 (November 1, 2012), p 6. A group living facility includes an adult foster care (AFC) home, and residents of an adult foster care (AFC) home are eligible for FAP benefits if (i) the home is licensed by the Department Bureau of Children and Adult Licensing (BCAL) and (ii) the home is a nonprofit (IRS tax exempt) and licensed for 16 or fewer residents. BEM 615 (July 2010), p 1. The local office must determine if the group living facility is acceptable before certifying eligibility for residents. BEM 615, p 4; BEM 617 (January 2011), p 1. Once the facility is a qualifying institution, then the Department must assess whether the resident meets the criteria in BEM 617. BEM 265, p 2.

In this case, Claimant, a mentally disabled adult, resides in a residential home owned by the AHR with four other mentally disabled adults unrelated to the AHR. Claimant's AHR's counsel concedes that the group home in which Claimant resides is not currently licensed by BCAL, not a nonprofit, and not an FNS-authorized retailer. Thus, the home


in which Claimant resides is not an institution in which residents are eligible for FAP benefits.

However, counsel contends that the policy governing institutions, including AFC homes, is not applicable in Claimant's situation because institutions, as defined by policy, furnish food or provide a majority of meals to residents and, while the AHR furnished shelter and some services to Claimant and the four other unrelated disabled adult residents, she did not furnish food or provide meals to residents. In essence, counsel argues that Claimant is merely a roomer in AHR's home and that the AHR is Claimant's authorized representative (AR) to make food purchases for Claimant using Claimant's EBT card. See BEM 212, p 8; BAM 110 (January 2013), p 11.

In support of her case, counsel argues that, while the lease between Claimant and the AHR states that it is for room and board, it does not expressly include the provision of meals to Claimant as part of the lease terms. The facts presented established that Claimant paid for the cost of the food used in her meals by allowing the AHR to serve as her AR to purchase food using her FAP benefits. However, counsel acknowledged at the hearing that the AHR shopped for the food, prepared most of the meals and served the meals to Claimant and the other residents. She added that allowing Claimant to prepare her own meals posed a health and safety risk to herself and the other residents. By undertaking the responsibility of purchasing Claimant's food and preparing most of Claimant's meals, the AHR's activities established that she furnished food or provided the majority of meals to Claimant. Under these facts, the AHR's home was an institution and Claimant, as a resident of the home, could be eligible for FAP benefits only if the home met the conditions specified under policy. Because it did not, the Department acted in accordance with Department policy when it closed Claimant's FAP case based on institutional ineligibility.

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 acted in accordance with Department policy when it closed Claimant's FAP case based on institutional status. Accordingly, the Department's decision is AFFIRMED.


Alice C. Elkin
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: 4/26/2013

Date Mailed: 4/26/2013

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.

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

ACE/hw

cc:

