

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-39759
Issue No.: 3014
Case No.: [REDACTED]
Hearing Date: May 8, 2013
County: Oakland (63-03)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 May 8, 2013, from Detroit, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) benefits effective May 1, 2013, ongoing, because Claimant did not reside in a valid type of institution?

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 benefits received benefits for:

- | | |
|--|---|
| <input type="checkbox"/> Family Independence Program (FIP). | <input type="checkbox"/> Adult Medical Assistance (AMP). |
| <input checked="" type="checkbox"/> Food Assistance Program (FAP). | <input type="checkbox"/> State Disability Assistance (SDA). |
| <input type="checkbox"/> Medical Assistance (MA). | <input type="checkbox"/> Child Development and Care (CDC). |

2. On March 27, 2013, the Department sent Claimant a Notice of Case Action notifying him of the closure of his FAP benefits effective May 1, 2013, ongoing, because he did not reside in a valid type of institution. Exhibit 2.
3. On April 5, 2013, Claimant's AHR filed a hearing request, protesting the Department's action. Exhibit 2.

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 Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 42 USC 601, *et seq.* The Department (formerly known as the Family Independence Agency) administers FIP pursuant to MCL 400.10, *et seq.*, and Mich Admin Rule 400.3101 through Rule 400.3131. FIP replaced the Aid to Dependent Children (ADC) program effective October 1, 1996.

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 Rule 400.3001 through Rule 400.3015.

The Medical Assistance (MA) program is established by the Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

The Adult Medical Program (AMP) is established by 42 USC 1315, and is administered by the Department pursuant to MCL 400.10, *et seq.*

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, is established by 2004 PA 344. The Department of Human Services (formerly known as the Family Independence Agency) administers the SDA program pursuant to MCL 400.10, *et seq.*, and 2000 AACS, R 400.3151 through Rule 400.3180.

The Child Development and Care (CDC) program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98

and 99. The Department provides services to adults and children pursuant to MCL 400.14(1) and Mich Admin Rule 400.5001 through Rule 400.5015.

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 210 (November 2012), p. 1. 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 210, p. 2. A person who is temporarily absent from the group is considered living with the group. BEM 210, p. 2. A person's absence is temporary if all of the following are true: (1) the person's location is known; (2) the person lived with the group before an absence; (3) there is a definite plan for return; and (4) the absence has lasted or is expected to last 30 days or less. BEM 210, p. 2. An exception is made to temporary absence if it lasts longer than 30 days because the absent person is in a hospital and there is a plan for him to return to the home. BEM 210, p 3.

Moreover, a person is a resident of an institution when the institution provides the majority of his meals as part of its normal services. BEM 210, p. 6. 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; or the facility is a medical hospital and there is a plan for the person's return home (see temporary absence). BEM 210, p. 6.

In this case, on an unspecified date, the Department received notice from Claimant's nursing facility that he was admitted to its facility on [REDACTED], and he was estimated to stay for 45 days. Exhibit 1. It is unclear if whether the Department sent a Verification Checklist to Claimant to verify his stay at the nursing facility. Nevertheless, on March 27, 2013, the Department sent Claimant a Notice of Case Action notifying him of the closure of his FAP benefits effective May 1, 2013, ongoing, because he did not reside in a valid type of institution. Exhibit 2.

At the hearing, Claimant's AHR presented as evidence documentation showing that Claimant was admitted to the nursing facility on [REDACTED], and that he was discharged on [REDACTED]. Exhibit A. Moreover, Claimant's AHR also presented evidence that Claimant was then admitted to the hospital after his discharge from the nursing facility on [REDACTED], and he was discharged from the hospital to his home on [REDACTED]. Exhibit A.

Based on the foregoing information and evidence, the Department improperly closed Claimant's FAP benefits. Even though Claimant was at a nursing facility for more than two months, he was residing at his home at the time the March 27, 2013, Notice of Case Action was sent. The Department took no action during his nursing facility stay to close his FAP benefits. Claimant's AHR credibly showed that Claimant was home at the time the Notice of Case Action was sent. Exhibit A. Additionally, Claimant has a group size of two.

In summary, the Department improperly closed Claimant's FAP benefits effective May 1, 2013, ongoing, because Claimant was residing in his home at the time the Notice of Case Action was sent.

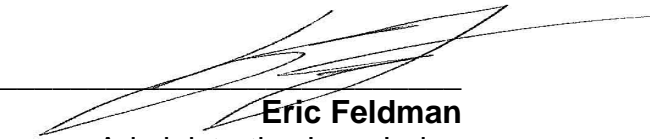
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated above and on the record, finds that the Department did act properly did not act properly.

Accordingly, the Department's decision is AFFIRMED REVERSED for the reasons stated above and on the record.

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

1. The Department shall reinstate Claimant's FAP case as of May 1, 2013;
2. The Department shall supplement Claimant for a group size of two for any lost FAP benefits that Claimant was eligible to receive but did not from May 1, 2013, ongoing; if otherwise eligible and qualified in accordance with Department policy; and
3. Notify Claimant in writing of its decision in accordance with Department policy.


Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: May 13, 2013

Date Mailed: May 14, 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

EJF/pf

cc:

