

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

IN THE MATTER OF:

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Reg. No.: 14-001538
Issue No.: 3001
Case No.: ██████████
Hearing Date: May 29, 2014
County: WAYNE-DISTRICT 18

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 May 29, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant and Claimant's Authorized Hearing Representative (AHR)/son, ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Assistant Payment Supervisor; and ██████████, Eligibility Specialist.

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) benefits effective April 1, 2014, ongoing?

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 was an ongoing recipient of FAP benefits.
2. From January 22, 2014 to January 25, 2014, Claimant was in the hospital.
3. From January 27, 2014 to February 13, 2014, Claimant was in a rehabilitation center.

4. On March 3, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits would close effective April 1, 2014, ongoing, due to her not being eligible because of institutional status. See Exhibit 1, pp. 3-4.
5. On April 23, 2014, Claimant and/or the AHR filed a hearing request, protesting the FAP case closure. See Exhibit 1, pp. 12-13.
6. On April 23, 2014, Claimant provided with the hearing request documentation of her hospital discharge summary and her rehabilitation discharge. See Exhibit 1, pp. 9-11.

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), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

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 273. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

Residents of institutions can qualify for certain program benefits in limited circumstances. BEM 265 (October 2013), p. 1. A person in a facility which provides its residents a majority of their meals can qualify for FAP if the facility:

- Is authorized by the Food and Nutrition Service (FNS) to accept Food Assistance; or
- Is an eligible group living facility as defined in BEM 615.

BEM 265, p. 2. The resident must also meet the criteria in the ELIGIBLE PERSONS section in BEM 617. BEM 265, p. 2. It should be noted that based on the testimony and evidence presented, the facility in question was not authorized by FNS to accept Food Assistance nor was it an eligible group living facility. See BEM 265, p. 2.

In this case, Claimant was an ongoing recipient of FAP benefits. From January 22, 2014 to January 25, 2014, Claimant was in the hospital. From January 27, 2014 to February 13, 2014, Claimant was in a rehabilitation center. The Department testified that this case was transferred to its DHS office. Moreover, the Department testified that

it believed that it received a Facility Admission Notice, which stated that Claimant was in a facility. On March 3, 2014, the Department testified that it entered the facility information and updated Claimant's living arrangement to facility. See Exhibit 1, p. 1. Thus, on March 3, 2014, the Department sent Claimant a Notice of Case Action notifying her that her FAP benefits would close effective April 1, 2014, ongoing, due to her not being eligible because of institutional status. See Exhibit 1, pp. 3-4.

Additionally, on April 23, 2014, Claimant and/or the AHR filed a hearing request, protesting the FAP case closure. See Exhibit 1, pp. 12-13. On April 23, 2014, Claimant provided with the hearing request documentation of her hospital discharge summary and her rehabilitation discharge. See Exhibit 1, pp. 9-11. On April 23, 2014, Claimant's AHR did not dispute that they first notified the Department that the Claimant was discharged from the rehabilitation center on February 13, 2014. See Exhibit 1, pp. 9-11.

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 (February 2014), p. 8. 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.
- The facility is a medical hospital and there is a plan for the person's return home.

BEM 212, p. 8.

A person who is temporarily absent from the group is considered living with the group. BEM 212, p. 3. A person's absence is temporary if all of the following are true:

- The person's location is known.
- The person lived with the group before an absence (newborns are considered to have lived with the group).
- There is a definite plan for return.
- The absence has lasted or is expected to last 30 days or less.

Exception: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home.

BEM 212, p. 3.

Based on the foregoing information and evidence, the Department improperly closed Claimant's FAP benefits effective April 1, 2014, ongoing.

First, the Department failed to present the Facility Admission Notice, which the Department believed provided the notice that Claimant was in a rehabilitation facility.

Second, Claimant presented credible evidence that she was eligible for FAP benefits because her facility was a medical hospital and there was a plan for her to return home. See BEM 212, p. 3. The evidence and testimony presented that Claimant was in the rehabilitation facility from January 27, 2014 to February 13, 2014. See Exhibit 1, pp. 9-11. A person who is temporarily absent from the group is considered living with the group and must meet several requirements to be temporarily absent as listed in BEM 212. See BEM 212, p. 3. The evidence presented that Claimant met those requirements for being temporarily absent from the group as follows: (i) Claimant's location was known; (ii) she lived with the group before the absence; (iii) she had a definite plan to return after the rehabilitation was completed; and (iv) the absence lasted less than thirty days. See BEM 212, p. 3. Therefore, Claimant was considered living with the FAP group and her FAP benefits should have not been closed based on ineligibility (institutional status). Because Claimant's absence was only temporary at the rehabilitation center, the Department improperly closed her FAP benefits effective April 1, 2014, ongoing. See BEM 212, pp. 3 and 8 and BEM 265, p. 2.

DECISION AND ORDER


The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department did not act in accordance with Department policy when it improperly closed Claimant's FAP benefits effective April 1, 2014, ongoing.

Accordingly, the Department's FAP decision is REVERSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Reinstate Claimant's FAP case as of April 1, 2014, ongoing;
2. Begin recalculating the FAP budget for April 1, 2014, ongoing, in accordance with Department policy;
3. Issue supplements to Claimant for any FAP benefits she was eligible to receive but did not from April 1, 2014, ongoing; and

4. Notify Claimant in writing of its FAP decision in accordance with Department policy.


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

Date Signed: **6/2/2014**

Date Mailed: **6/2/2014**

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NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS may order a rehearing or reconsideration on its own motion.

MAHS may grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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

CC: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]