

**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.: 14-003909  
Issue No.: 3001  
Case No.: ██████████  
Hearing Date: July 3, 2014  
County: DHS SSPC-West

**ADMINISTRATIVE LAW JUDGE:** C. Adam Purnell

**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 three-way telephone hearing was held on July 3, 2014 from Lansing, Michigan. Participants on behalf of Claimant included ██████████ ██████████ (Claimant's legal guardian/Authorized Hearing Representative (AHR)). Participants on behalf of the Department of Human Services (Department) included ██████████ ██████████ (Hearing Facilitator).

**ISSUE**

Did the Department properly deny Claimant's application for Food Assistance Program (FAP) benefits due to ineligibility?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On or about March 16, 2014, Claimant became ill and was transported to the hospital for treatment.
2. Claimant was admitted to the hospital.
3. On May 5, 2014, the Department received an application for assistance submitted on behalf of Claimant, who was still in the hospital at the time.
4. On May 16, 2014, Claimant's Authorized Representative (AR) indicated that Claimant was in the hospital with a serious illness and that he, at the time, did not have a definitive date of discharge.

5. Claimant was in a hospital setting from March 16, 2014, through early June, 2014, until he was transferred to a rehabilitation facility.
6. On May 16, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which denied Claimant's FAP application effective May 5, 2014. The DHS-1605 indicated that Claimant was not eligible for FAP due to his institutional status.
7. On May 30, 2014, the Department received a request for hearing signed by Claimant's AHR/legal guardian to challenge the application denial.

### **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.

BEM 265 provides that for all programs residents of institutions can qualify for certain program benefits in limited circumstances. BEM 265, p. 1 (4-1-2014). BEM 265 explains how institutional status affects eligibility. BEM 265, p. 1 (4-1-2014). "Institution" is defined as an establishment furnishing food, shelter and some treatment or services to more than three people unrelated to the proprietor. See BEM 265, p. 1 (4-1-2014).

A person in a facility which provides its residents a majority of their meals can qualify for FAP if the facility: (1) is authorized by the Food and Nutrition Service (FNS) to accept Food Assistance; or (2) is an eligible group living facility as defined in BEM 615. BEM 265, p. 2.

A person who is temporarily absent from the group is considered living with the group. 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. See BEM 212, p. 3 (2-1-2014) (Emphasis added).

Here, the Department contends that it properly denied Claimant's application for FAP because Claimant was ineligible due to his institutional status at the time of application. According to the Department, Claimant was ineligible for FAP under BEM 615 and BEM 212 because he was in a hospital institution with no plan for him to return home. Claimant's AHR, on the other hand, contends that Claimant was in the hospital with a brain infection and the Department falsely indicated that Claimant was expected to enter into a substance abuse center. Claimant's AHR stated that Claimant, since March 16, 2014 had been in a hospital setting with no definite date to return home. Claimant's AHR also testified that Claimant was at various hospitals and that he, at the time of the hearing, was at the [REDACTED] with no definite date to return home.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). The weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. This Administrative Law Judge would point out that the Department's documentation that erroneously indicated Claimant was scheduled to be sent to a substance abuse treatment center is not relevant to the instant matter. It is not relevant because the reason for the Department's decision to deny the FAP application concerned Claimant's eligibility due solely to his institutional status at a hospital. With that being said, the record evidence shows that Claimant was in a hospital setting both before and after the Department received his FAP application on May 5, 2014. There was no evidence that Claimant, at the time he received treatment and care at any of the hospitals, was not provided with nutrition and/or food. Thus, this Administrative Law Judge finds that the hospitals where Claimant resided had provided him with a majority of his meals as defined by BEM 265. Moreover, there was no evidence in this record that any of the hospitals (or the rehabilitation center) where Claimant was treated 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. These institutions also did not meet the requirements of BEM 617. Because there was no dispute that Claimant did not have a definitive plan of return home, he was not temporarily absent at the time of application as defined by BEM 212. Accordingly, the Department properly determined that Claimant was not eligible for FAP at the time of application due to his institutional status.

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 acted in accordance with Department policy when it denied Claimant's May 5, 2014 application for FAP benefits.

**DECISION AND ORDER**

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

IT IS SO ORDERED.



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

Date Signed: **7/7/2014**

Date Mailed: **7/7/2014**

CAP/sw

**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]