

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

IN THE MATTER OF:

██████████
██████████
██████████

Reg. No.: 15-002415
Issue No.: 3001
Case No.: ██████████
Hearing Date: May 7, 2015
County: WAYNE-DISTRICT 82
(ADULT MEDICAL)

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on May 7, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant's Authorized Hearing Representative (AHR), ██████████, President of ██████████ ██████████. Participants on behalf of the Department of Health and Human Services (Department or DHHS) included ██████████ Family Independence Manager; and ██████████, Eligibility Specialist.

ISSUE

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

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. Claimant is neither disabled nor a veteran.
3. Since February 2014, Claimant has resided in an AFC home.
4. On September 13, 2014, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits would close effective October 1, 2014, ongoing because he is not considered to be disabled or a veteran in order to be eligible for FAP benefits in an AFC home. See Exhibit 2, pp. 4-5.

5. On September 22, 2014, Claimant's AHR filed a hearing request, protesting the Department's action. See Exhibit 1, p. 1 and Exhibit 2, pp. 9-10.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-119b, and Mich Admin Code, R 400.3001-.3011.

Procedural history

On September 22, 2014, Claimant's AHR filed a hearing request, protesting the FAP case closure. See Exhibit 2, pp. 9-10. On October 15, 2014, the Michigan Administrative Hearing System (MAHS) sent both parties a Notice of Hearing, which scheduled the hearing for October 29, 2014 (see Reg. No. 14-012836). On October 23, 2014, the Notice of Hearing was returned to MAHS. As a result, Claimant's AHR did not appear for the hearing and the hearing was dismissed for failure to appear.

On February 19, 2015, Claimant's AHR requested another hearing, protesting the FAP case closure. See Exhibit 1, p. 2. On March 13, 2015, MAHS sent a Notice of Hearing, which scheduled a hearing for April 1, 2015. On April 1, 2015, Claimant's AHR attended the hearing; however, Claimant's hearing request (dated February 19, 2015) was dismissed for lack of jurisdiction because it was not timely filed within ninety days of the Notice of Case Action (dated September 13, 2014). See Exhibit 3, pp. 8-9.

On April 9, 2015, Claimant's AHR submitted a letter indicating that she never received the Notice of Hearing regarding the original hearing scheduled for October 29, 2014. As such, on April 15, 2015, the Administrative Law Judge (ALJ)/Manager issued an Order Vacating the Dismissal and Order to Schedule Matter for Hearing.

On April 20, 2015, MAHS sent a Notice of Hearing, which scheduled a hearing for May 7, 2015. On May 7, 2015, both parties appeared for the hearing and this ALJ addressed Claimant's AHR hearing request dated September 22, 2014, in which she disputed the FAP case closure.

Preliminary matter

Subsequent to the hearing, Claimant's AHR attempted to submit additional post-hearing correspondence; however, this documentation was not admitted into the evidence record and will not be reviewed.

FAP benefits

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 (April 2014), p. 2. The resident must also meet other criteria's located in BEM 617 (Eligible persons). BEM 265, p. 2.

Residents of certain group living facilities can qualify for FAP. BEM 615 (July 2014), p. 1. AFCs must be licensed by the DHS Bureau of Children and Adult Licensing (BCAL) to offer either, or both, of the following levels of care: domiciliary care or personal care. BEM 615, p. 1. 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 615, p. 2.

The Department must verify that an AFC home is an eligible facility. BEM 617 (July 2013), p. 1. A resident in an eligible AFC home must be **disabled** or **veteran** (per BEM 550 Senior/Disabled/Veteran policy). BEM 617, p. 1. Also, a senior is eligible only when the person meets the definition of either disabled or veteran. BEM 617, p. 1.

In the present case, the Department did not dispute that Claimant is a resident in an eligible AFC home; however, the Department argued that Claimant is neither disabled nor a veteran in order to qualify for FAP benefits.

In response, the AHR agreed that Claimant is not a veteran. However, the AHR argued that Claimant should be eligible for FAP assistance as he is currently in the appeal process of his Social Security Administration (SSA) disability decision. In fact, the AHR provided a copy of the SSA decision, which found Claimant not disabled. See Exhibit 2, p. 3. Moreover, the evidence indicated that Claimant has yet to have a disability determination by the Medical Review Team (MRT).

A person is disabled if they receive one of the following:

- A federal, state or local public disability retirement pension and the disability is considered permanent under the Social Security Act.
- Medicaid program which requires a disability determination by MRT or SSA.

- Note: Breast and Cervical Cancer Prevention and Treatment Program Medicaid cases are not considered disabled.
- Railroad Retirement and is eligible for Medicare or meets the Social Security disability criteria.

BEM 550 (February 2014), pp. 1-2. A person who receives or has been certified and awaiting their initial payment for one of the following:

- Social Security disability or blindness benefits.
- Supplemental Security Income (SSI), based on disability or blindness, even if based on presumptive eligibility.

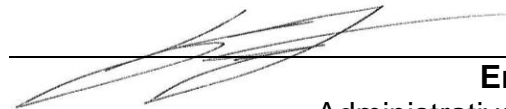
BEM 550, p. 2.

Based on the foregoing information and evidence, the Department properly closed Claimant's FAP benefits effective October 1, 2014, in accordance with Department policy. Claimant is currently not disabled/veteran and does not meet any of the requirements to be considered disabled under BEM 550. See BEM 550, pp. 1-2. A review of BEM 550 did not find any exception for the Claimant to be eligible for FAP benefits when living in an AFC home when a disability decision is currently on appeal. Because Claimant is not considered to be disabled or a veteran in order to be eligible for FAP benefits in an AFC home, the Department properly closed his FAP benefits effective October 1, 2014. See BEM 265, p. 2; BEM 550, pp. 1-2; BEM 615, pp. 1-2; and BEM 617, p. 1.

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 acted in accordance with Department policy when it closed Claimant's FAP benefits effective October 1, 2014.

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



Eric Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/12/2015**

Date Mailed: **5/12/2015**

EJF/tm

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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 48909-8139

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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