



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: June 5, 2017
MAHS Docket No.: 17-005592
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

HEARING DECISION

Following Petitioner'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 [REDACTED] [REDACTED] from Detroit, Michigan. Petitioner was present for the hearing and represented herself. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator.

ISSUES

Did the Department properly close Petitioner's Food Assistance Program (FAP) benefits effective [REDACTED]?

Did the Department properly provide Medical Assistance (MA) coverage that Petitioner is eligible to receive for?

FINDINGS OF FACT

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

1. Petitioner is an ongoing recipient of MA benefits. [Exhibit B, p. 1.]
2. Petitioner was an ongoing recipient of FAP benefits.
3. Prior to Petitioner staying in the Long Term Care (LTC) facilities, her FAP group size consisted of herself and her minor son, Child A. [Exhibit A, p. 10.]

4. On [REDACTED], Petitioner entered a LTC facility. [Exhibit A, pp. 5-6.]
5. In early [REDACTED], Petitioner transferred to a second LTC facility.
6. On [REDACTED], Petitioner was released from the second LTC facility and was back at her residence. [Exhibit A, pp. 5-6.]
7. During Petitioner's stay in the LTC facilities, Child A resided at Petitioner's residence with his adult brother, who was his caretaker during Petitioner's absence.
8. On or about [REDACTED], the Department learned of Petitioner's admittance to the LTC facility and initiated case closure of her FAP benefits. [Exhibit A, p. 5.]
9. On [REDACTED], the Department sent Petitioner a Notice of Case Action notifying her that her FAP benefits would close effective [REDACTED], ongoing because she was not eligible for benefits due to her institutional status. [Exhibit A, pp. 9-12.]
10. The Notice of Case Action also stated that Child A was removed from the FAP group because he was not or no longer living with her. [Exhibit A, pp. 9-12.]
11. On [REDACTED], Petitioner filed a hearing request, protesting the Department's action. [Exhibit A, pp. 2-3.]

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.

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

Preliminary matter

Based on the Petitioner's testimony and hearing request, she is disputing the following: (i) the closure of her MA benefits; and (ii) the closure of her FAP benefits effective [REDACTED]. The undersigned Administrative Law Judge (ALJ) will address each issue separately below:

MA benefits

In this case, Petitioner claimed that her MA benefits were closed. She indicated that she was informed from her LTC facility that her MA coverage had closed, but failed to provide any such documentation. Instead, the Department presented Petitioner's Eligibility Summary, which showed that she has ongoing MA – AD – Care coverage, with no lapse in coverage. [Exhibit B, p. 1, and see BEM 163 (July 2013), pp. 1-3.]

Based on the foregoing information and evidence, the undersigned will dismiss Petitioner's MA hearing request because her coverage is ongoing. The evidence established that no negative action ever took place (i.e., the closure of MA benefits). There is nothing further the undersigned can address as it relates to her MA concerns.

FAP benefits

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 212 (January 2017), 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 212, p. 3. 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: (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 212, p. 3. 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 212, p. 3.

Moreover, BEM 212 describes certain living situations which create ineligibility for FAP or which must meet specific requirements to allow eligibility. BEM 212, p. 7. A person is a resident of an institution when the institution provides the majority of her meals as part of its normal services. BEM 212, 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; or the facility is a medical hospital and there is a plan for the person's return home (see temporary absence). BEM 212, p. 8.

In this case, on or about [REDACTED], the Department learned of Petitioner's admittance to the LTC facility and initiated case closure of her FAP benefits effective [REDACTED]. [Exhibit A, pp. 5 and 9-10.] It was established at the hearing that Petitioner resided at two different LTC facilities from on or about [REDACTED]. [Exhibit A, pp. 5-6.] Based on this information, Petitioner did not meet the definition of temporary absence because she resided at the LTC facility for more than 30 days. See BEM 212, p. 3. Moreover, the evidence established that Petitioner was not eligible for FAP benefits because she was a resident of an institution, her LTC facilities, which provided the majority of her meals as part of its normal services. BEM 212, p. 8; BEM 615 (January 2017), pp. 1-6; and BEM 617 (July 2016), pp. 1-9. As such, the Department closed her FAP benefits effective [REDACTED].

In response, Petitioner did not dispute that she was not eligible for FAP benefits due to her residence at the LTC facilities. Instead, Petitioner argued that her son, Child A, should have continued to receive FAP benefits; and the Department should have not removed him from the group. During Petitioner's stay in the LTC facilities, Child A resided at Petitioner's residence with his adult brother, who was his caretaker during Petitioner's absence.

The Department testified that Petitioner was the head of household (HOH) and due to her ineligibility, the entire FAP case closed. The Department indicated that the adult son should have applied for FAP benefits on behalf of Child A during the period of Petitioner's absence.

Based on the foregoing information and evidence, the Department acted in accordance with Department policy when it closed Petitioner's FAP benefits and removed Child A from the FAP group effective [REDACTED]. The evidence established that Petitioner was the HOH and that she was no longer eligible for FAP benefits due to her institutional status (staying at the LTC facilities). Policy states that as a result of her living situation, this created ineligibility for FAP benefits, which the Department properly conducted when it initiated case closure effective [REDACTED]. See BEM 212, pp. 7-8. In regards to Child A, he is a minor; and the adult brother, who was Child A's caretaker during Petitioner's absence, should have applied for FAP benefits with Child A in the group. Policy defines a caretaker as a related or unrelated person who provides care or supervision to a child(ren) under 18 who lives with the caretaker but who is not a natural, step or adopted child. BEM 212, p. 2. A person acting as a parent and the child(ren) for whom he acts as a parent who live with him must be in the same group. BEM 212, p. 2. At that time, the adult brother should have applied for FAP benefits during Petitioner's absence; and Child A and the adult brother should have been in the same group, if otherwise eligible. See BEM 212, p. 2; BAM 110 (January 2017), pp. 1-27, (application filing and registration); and BAM 115 (January 2017), pp. 1-35 (application processing). Accordingly, the undersigned finds that the closure of the FAP benefits and removal of the Child A from the group was in accordance with Department policy. See BEM 212, pp. 1-13.

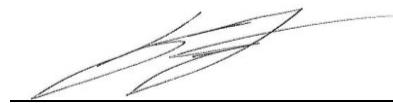
DECISION AND ORDER

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 (i) Petitioner's MA hearing request is dismissed; and (ii) the Department acted in accordance with Department policy when it closed Petitioner's FAP benefits and removed Child A from the FAP group effective [REDACTED].

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

IT IS ALSO ORDERED that Petitioner's **MA** hearing request is **DISMISSED**.

EJF/jaf



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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; 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

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

[REDACTED]

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