



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 11, 2019
MAHS Docket No.: 19-000093
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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. After due notice, telephone hearing was held on February 6, 2019, from Lansing, Michigan. Petitioner was represented by his authorized hearing representative, Helen Willis. The Department was represented by Delaun Hill and Marsha Dial.

ISSUE

Did the Department of Health and Human Services (Department) properly close Petitioner's Food Assistance Program (FAP) benefits?

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 was an ongoing Food Assistance Program (FAP) recipient and did not receive State Disability Assistance (SDA) benefits.
2. On December 28, 2018, the Department notified Petitioner that he was no longer eligible for Food Assistance Program (FAP) benefits as of February 1, 2019. Exhibit A, pp 10-13.
3. On January 7, 2019, the Department received Petitioner's request for a hearing. Exhibit A, pp 1-5.

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.

A person is a resident of an institution when the institution provides the majority of his meals as part of its normal services. 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.

Department of Health and Human Services Bridges Eligibility Manual (BEM) 212 (January 1, 2017), p 8.

A facility is not permitted to accept food assistance benefits for meals served to its residents. Clients may use their food assistance benefits for purchases at regular outlets. Department of Health and Human Services Bridges Eligibility Manual (BEM) 615 (April 1, 2015), p 1.

Residents of institutions are not eligible for FAP benefits as separate household or as members of any household. Individuals must be considered residents of an institution when the institution provides them with over 50% of three meals daily as part of the institution's normal services. 7 CFR 273.1(a)(7).

On January 7, 2019, the Department received Petitioner's request for a hearing. The hearing request bears his mark in the signature box and designates an authorized hearing representative. The hearing request was received within 90 days of the closure of FAP benefits, and Petitioner is entitled to a hearing protesting the closure of those FAP benefits. Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (October 1, 2018), pp 1-48.

Petitioner was an ongoing FAP recipient but has not received SDA benefits. The Department closed Petitioner's FAP benefits as of February 1, 2018, based on its determination that he resides in an institution meeting the criteria of BEM 615, making him ineligible for any FAP benefits.

The Department failed to offer any evidence that Petitioner resides in an "institution", or that he receives over 50% of his meals from an "institution", or that he resides in an "institution" that accepts his FAP benefits as payment for the meals provide to him. The evidence does not support a finding that Petitioner does not use his FAP benefits, either on his own or through an authorized representative, to purchase food in a manner authorized by the Food and Nutrition Act of 2008.

No evidence was provided that the Department requested that Petitioner provide verification of the nature of his living situation. In the absence of verification that Petitioner resides in an institution, the criteria of BEM 615 do not apply towards his circumstances. Petitioner was an ongoing FAP recipient before February 1, 2018, and the Department has failed to establish that he remains eligible for ongoing FAP benefits.

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 closed Petitioner's Food Assistance Program (FAP) benefits based on his living circumstances.


DECISION AND ORDER

Accordingly, the Department's 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:

Initiate a determination of the Petitioner's eligibility for the Food Assistance Program (FAP) effective February 1, 2019, and issue the Petitioner any retroactive benefits he may be eligible to receive, if any.

KS/dh



Kevin Scully
Administrative Law Judge
for Robert Gordon, 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) 763-0155; 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

DHHS

Christine Steen
3040 West Grand Blvd
Suite 4-250
Detroit, MI 48202

Wayne County (District 82), DHHS

BSC4 via electronic mail

M. Holden via electronic mail

D. Sweeney via electronic mail

Petitioner

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Authorized Hearing Rep.

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