



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: September 25, 2020
MOAHR Docket No.: 20-005334
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a hearing was held via telephone conference on September 18, 2020. Petitioner participated and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Charletta Toteh, supervisor, and Raina Nichols, specialist.

ISSUE

The issue is whether MDHHS properly terminated Petitioner's Food Assistance Program (FAP) eligibility.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. As of August 2020, Petitioner was an ongoing recipient of FAP benefits.
2. As of August 2020, Petitioner was a resident in a senior assisted living facility which served the majority of meals to its residents.
3. On August 11, 2020, MDHHS terminated Petitioner's FAP eligibility beginning September 2020 due to Petitioner's "institutional status".
4. On August 12, 2020, Petitioner requested a hearing to dispute the termination of FAP benefits.

CONCLUSIONS OF LAW

The Food Assistance Program [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. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

Petitioner verbally requested a hearing to dispute a termination of FAP benefits. Exhibit A, p. 3. A Notice of Case Action dated August 11, 2020, stated that Petitioner's FAP eligibility would end September 2020 due to "institutional status".

Residents of institutions can qualify for certain program benefits in limited circumstances. BEM 265 (April 2018) p. 1. An institution is an establishment furnishing food, shelter and some treatment or services to more than three people unrelated to the proprietor. *Id.* 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 Bridges Eligibility Manual (BEM 615).

It was not disputed that Petitioner resided in a senior living assisted facility which provided a majority of meals to its residents. MDHHS contended that Petitioner was ineligible for FAP benefits because she resided in a facility which provided a majority of meals to its residents. Further, the facility was not authorized by FNS to accept FAP benefits, nor was the facility an eligible group living facility under BEM 615.

MDHHS contended that its conclusion was supported by only one other person at Petitioner's facility being eligible for FAP benefits. MDHHS testimony also emphasized that residents at Petitioner's facility were not given refrigerators in their rooms. Neither the number of residents receiving FAP benefits at a facility, nor whether its residents are given refrigerators dictate whether a client is eligible for FAP benefits. Thus, this evidence will not be further considered.

Notably, MDHHS has exceptions to institutional status. A person in a home for the aged may be eligible to receive FAP benefits, regardless of the length of stay.¹ MDHHS benefit policy does not appear to define a home for the aged. MDHHS does provide guidance in its licensing capacity. A "home for the aged" means a supervised personal care facility, other than a hotel, adult foster care facility, hospital, nursing home, or

¹ Other exceptions include the following: hospitals, county infirmaries, adult foster care homes, substance abuse treatment centers, long-term care facilities, Department of Correction contract facilities for probationers, and institutes and centers operated by the Michigan Rehabilitation Services.

county medical care facility that provides room, board, and supervised personal care to 21 or more unrelated, non-transient, individuals 60 years of age or older.² Homes that are operated in conjunction with and as a distinct part of a licensed nursing home may serve 20 or fewer adults.³ Evidence was not taken as to how Petitioner's residential facility was licensed, but the limited evidence presented supports a finding that she resides in an home for the aged.

As Petitioner resides in a home for the aged, she is eligible to receive FAP benefits under MDHHS policy. Thus, the termination of Petitioner's FAP eligibility was improper. As a remedy, Petitioner is entitled to a full reinstatement of benefits.

² <https://www.lawinsider.com/dictionary/home-for-the-aged>

³ *Id.*

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly terminated Petitioner's FAP eligibility. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reinstate Petitioner's FAP eligibility beginning September 2020 subject to the finding that Petitioner resides in a home for the aged and is not prohibited from receiving FAP benefits based on institutional status; and
- (2) Issue a supplement of benefits and notice in accordance with policy.

The actions taken by MDHHS are **REVERSED**.

CG/tlf



Christian Gardocki

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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Wayne-76-Hearings
BSC4 Hearing Decisions
D. Sweeney
M. Holden
MOAHR

Petitioner - Via First-Class Mail:

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