



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

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Date Mailed: April 16, 2019
MAHS Docket No.: 19-002684
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 telephone hearing was held on April 15, 2019, from Detroit, Michigan. Petitioner was present and represented herself. The Department of Health and Human Services (Department) was represented by Amber Gibson, Hearing Facilitator.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) and Medical Assistance (MA) program benefit cases?

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 FAP and MA benefit recipient.
2. On February 7, 2019, the Department completed a Front End Eligibility (FEE) investigation (Exhibit A).
3. On February 25, 2019, the Department sent Petitioner a Health Care Coverage Determination Notice (HCCDN) informing her that her MA benefit case was closing effective April 1, 2019, ongoing (Exhibit B).
4. On February 25, 2019, the Department sent Petitioner a Notice of Case Action (NOCA) informing her that her FAP benefit case was closing effective April 1, 2019, ongoing.

5. On March 6, 2019, Petitioner submitted a request for hearing.

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.

In this case, Petitioner was an ongoing FAP and MA recipient. On February 7, 2019, the Department conducted a FEE investigation regarding Petitioner's residency. The Department testified that Petitioner used her FAP benefits exclusively in the State of Florida for the period of November 1, 2018 through February 7, 2019. The Department contended that Petitioner established residency in Florida, and therefore, was not eligible for FAP and MA in the State of Michigan.

Federal Regulations provide with respect to FAP recipient's residency requirements state that:

(a) A household shall live in the State in which it files an application for participation. The State agency may also require a household to file an application for participation in a specified project area (as defined in § 271.2 of this chapter) or office within the State. No individual may participate as a member of more than one household or in more than one project area, in any month, unless an individual is a resident of a shelter for battered women and children as defined in § 271.2 and was a member of a household containing the person who had abused him or her. Residents of shelters for battered women and children shall be handled in accordance with § 273.11(g). The State agency shall not impose any durational residency requirements. The State agency shall not require an otherwise eligible household to reside in a permanent dwelling or have a

fixed mailing address as a condition of eligibility. Nor shall residency require an intent to reside permanently in the State or project area. Persons in a project area solely for vacation purposes shall not be considered residents. 7 CFR 273.3.

Based upon the above residency federal regulation, there is no requirement that an eligible household reside in Michigan, except at the time of application. In addition, there is no requirement that residency be based upon the recipient's intent to reside permanently in Michigan.

Petitioner acknowledged she was temporarily residing in Florida during the period of November 16, 2018 through April 8, 2019 and utilized her FAP benefits in the State of Florida. However, there was no evidence presented that Petitioner submitted an application during the time she was in Florida. The Department cited no federal requirement or regulation that prohibits out of state use of Michigan FAP benefits by a recipient.

BEM 220 requires that a person be a Michigan resident for FAP eligibility and provides that a person is a resident while living in Michigan for any purpose other than a vacation even if there is no intent to remain in the state permanently or indefinitely. BEM 220 (April 2018), p. 1. In order to be in compliance with the federal regulations, this rule can only apply at application. No evidence was presented that Respondent lacked Michigan residency at the time of any Michigan FAP application. BEM 212 also defines a temporary absence from a group as having lasted or expecting to last 30 days or less. BEM 212 (January 2017), p. 3. The Department has utilized this language under BEM 212 to establish a loss of residency, but it does not discuss residency for purposes of FAP eligibility, the policy discusses removal from a FAP group. In order for BEM 212 to be in compliance with federal regulations, that language cannot apply to residency. A FAP recipient is free to use their FAP benefits in any state. Therefore, the Department did not act in accordance with policy when it closed Petitioner's FAP benefit case.

To be eligible for MA coverage through the Department, a person must be a Michigan resident. BEM 220 (January 2016), p. 1; 42 CFR 435.403(a). For MA purposes, a Michigan resident is an individual who is living in Michigan except for a temporary absence. BEM 220, p. 2. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. BEM 220, p. 2; 42 CFR 435.403(j).

Petitioner testified that she went to Florida for the Thanksgiving and Christmas holidays. Petitioner stated that she continued to stay in Florida because her son and daughter in-law both had medical procedures. Petitioner has since returned to Michigan from Florida. Petitioner testified that she never intended to permanently reside in Florida and retained her residence in Michigan.

Petitioner gave credible testimony that her absence from the State of Michigan was temporary and that she returned to Michigan once the purpose of her stay in Florida

was accomplished. Therefore, Petitioner maintained her Michigan residency for MA purposes. Thus, the Department did not act in accordance with policy when it closed Petitioner's MA benefit case.

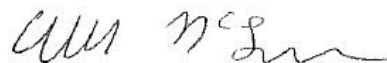
DECISION AND ORDER

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 did not act in accordance with Department policy when it closed Petitioner's MA and FAP benefit cases.

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:

1. Redetermine Petitioner's MA and FAP eligibility as of April 1, 2019, ongoing;
2. If Petitioner is eligible for FAP benefits, issue supplements she is entitled to receive as of April 1, 2019;
3. If Petitioner is eligible for MA benefits, provide her with coverage she is entitled to receive as of April 1, 2019, ongoing; and
4. Notify Petitioner of its FAP and MA decisions in writing.



EM/

Ellen McLemore

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

Amber Gibson
MDHHS-Ingham-Hearings

Petitioner

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BSC4
M Holden
D Sweeney
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EQAD