



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: April 14, 2022
MOAHR Docket No.: 22-000741
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 line on April 6, 2022. Petitioner participated and was unrepresented. [REDACTED], Petitioner's niece, testified on behalf of Petitioner. The Michigan Department of Health and Human Services (MDHHS) was represented by Mary Strand, manager, and Ciera Moshier, specialist

ISSUE

The issue is whether MDHHS properly denied Petitioner's application for 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. On [REDACTED], 2022, Petitioner applied for FAP benefits and reported residency in an assisted living group facility.
2. On February 10, 2022, during an interview, Petitioner reported to MDHHS that his facility serves three meals per day to the residents.
3. On February 10, 2022, MDHHS denied Petitioner's application for FAP benefits due to Petitioner's "institutional status".
4. On [REDACTED], 2022, Petitioner verbally requested a hearing to dispute the denial of FAP benefits.

CONCLUSIONS OF LAW

The 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. MDHHS administers the FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-119b, and Mich Admin Code, R 400.3001-.3011. FAP 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 denial of FAP benefits.¹ Exhibit A, p. 3. Petitioner applied for FAP benefits on February 7, 2022. Exhibit A, p. 8. A Notice of Case Action dated February 10, 2022, stated that Petitioner's application for FAP benefits was denied due to his "institutional status". Exhibit A, pp. 16-19.

An institution is an establishment which furnishes food, shelter and some treatment or services to more than three people unrelated to the proprietor. Bridges Program Glossary (January 2021) p. 35. Persons are residents of an institution when the institution provides the majority of their meals as part of its normal services. 7 CFR 273.1(b)(7)(vi) and BEM 212 (October 2020) p. 8. Residents of institutions are **not** eligible for FAP benefits unless one of the following is true:

- The facility is authorized by the Food and Nutrition Service (FNS) to accept FAP benefits;
- The facility is an eligible group living facility (see BEM 615); or
- The facility is a medical hospital and there is a plan for the person's return home. BEM 212 (October 2020) p. 8

It was not disputed that Petitioner resided in an assisted living group facility. Petitioner told MDHHS during an application interview that his facility offered three meals per day. Exhibit A, pp. 9-15. Petitioner and his niece each testified that the facility provided shelter, meals, and other services to its 30+ residents. Petitioner testified he prefers not to eat the offered meals because he is diabetic, and the food is not well cooked.

MDHHS contended that Petitioner's residential facility's offering of meals to residents verifies Petitioner's institutional status. MDHHS further contended that because none of the above listed exceptions from BEM 212 apply, including those in BEM 615, Petitioner's application was properly denied.²

However, to be considered a resident of an institution, the institution in which the individual resides must "provide [its residents] with the majority of their meals (over 50 percent of the three meals daily) as part of the institution's normal services." 7 CFR

¹ Generally, clients must request hearings in writing. BAM 600 (March 2021) p. 2. However, hearings to dispute FAP eligibility may also be requested orally. *Id.*

² Exceptions in BEM 615 include residents of adult foster care homes, supported community living facilities, county infirmaries, substance abuse treatment centers, homes for the aged, long-term care facilities, domestic violence shelters, federally subsidized housing for the elderly, and temporary housing for homeless. Respondent was not a resident of any of these facility types.

273.1(e)(7)(vi). The Food and Nutrition Service (FNS) has considered the FAP eligibility specifically for residents of assisted living facilities. In a memorandum, FNS stated the following concerning when food services create institutional status for its residents:

For a person who elects to receive the majority of his or her meals via an institution's optional meal plan, this is a normal service of the institution, and, unless the facility qualifies as one of the exceptions to institutional ineligibility... the individual is ineligible for [FAP]. Those that do not elect to receive the majority of their meals from the facility would not be considered residents of any institution and would, therefore, be entitled to receive food stamp benefits if otherwise eligible.³

One result of the above interpretation is that some residents from the same facility may be eligible for FAP benefits, while others are not. FNS addressed this result as follows:

The Food Stamp Act is very restrictive on who can be exempted from institutional ineligibility. However, the Food Stamp Act at Section 3(g) allows a more expansive definition of what constitutes food that may be purchased with food stamp benefits. It is, therefore, possible for residents of a facility that does not satisfy one of the exceptions to institutional ineligibility who receive the majority of their meals from the facility to be ineligible to receive food stamp benefits while others in the same facility who do not receive the majority of their meal from the facility to receive food stamp benefits if there are otherwise determined eligible. *Id.*

MDHHS assumed that Respondent was in "institutional status" because his assisted living facility offered meals. FNS considers whether such meals are optional. Residents of assisted living facilities are not in institutional status if they elect not to receive most meals from the facility. No evidence was presented as to whether Petitioner was permitted by the facility in which he resided to elect a food preference and/or what his preference was.

Given the evidence, MDHHS failed to establish that Petitioner elected to receive most of his meals from his residential facility. Thus, Petitioner's institutional status was not established and the denial of FAP benefits was improper.

³ Arthur T. Foley, Director, Program Development Division, Food Stamp Program, FNS (November 7, 2005). *Food Stamp Eligibility for Residents of Assisted Living Facilities with Meal Options*. <https://www.fns.usda.gov/snap/eligibility/residents-assisted-living-facilities-meal-options>

DECISION AND ORDER

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

- (1) Reregister Petitioner's FAP application dated [REDACTED], 2022;
- (2) Reprocess Petitioner's application, taking into consideration whether Petitioner elected to receive most of his meals from his residential facility; and
- (3) Issue notice and supplements, if any, in accordance with policy.

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

CG/mp



Christian Gardocki
Administrative Law Judge

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

Email Recipients:

MDHHS-Oakland-District-IV-Hearings
D. Sweeney
M. Holden
MOAHR
BSC4

First-Class Mail Recipient:

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]