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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

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ACTING DIRECTOR

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

Date Mailed: December 15, 2023
MOAHR Docket No.: 23-007735
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 December 7, 2023. Petitioner did not participate and was represented. [REDACTED] [REDACTED] and [REDACTED] [REDACTED] Petitioner's parents, and guardians, participated as Petitioner's authorized hearing representatives (AHRs). The Michigan Department of Health and Human Services (MDHHS) was represented by Kenika Bradley, 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] [REDACTED] 2023, Petitioner applied for FAP benefits and reported living in an institution or a group living facility. The facility may or may not be an group living facility eligible to receive FAP benefits under BEM 615 and/or authorized by the Food and Nutrition Service (FNS) to receive FAP benefits.
2. On September 18, 2023, during an interview, Petitioner's mother reported to MDHHS that Petitioner's rent is \$800 and \$200 is additionally paid for the facility to serve meals.

3. On September 18, 2023, MDHHS denied Petitioner's application for FAP benefits due to Petitioner's "institutional status".
4. On November 3, 2023, Petitioner's AHR 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's AHR requested a hearing to dispute a denial of FAP benefits. Exhibit A, pp. 4-7. Petitioner applied for FAP benefits on August 22, 2023. Exhibit A, pp. 9-15. A Notice of Case Action dated September 18, 2023, stated that Petitioner's application for FAP benefits was denied due to "institutional status". Exhibit A, pp. 23-26.

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 most 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 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

Petitioner's application for FAP benefits dated [REDACTED] 2023, reported that Petitioner resided in a group living facility. Exhibit A, p. 11. During the application interview on September 18, 2023, Petitioner's mother told MDHHS that Petitioner's residence provided meals for an additional \$200 in monthly rent.¹ Exhibit A, pp. 16-22. Petitioner's mother testified that the facility housing her son includes more than three persons and provided him with 24-hour supervision, meals, and medical care.²

For MDHHS to deny Petitioner FAP benefits, Petitioner must be deemed a resident of an institution. 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

¹ She stated that Petitioner pays \$1,000 in monthly rent and that he would only pay \$800 if he were eligible to receive FAP benefits.

² Petitioner's mother testified that the facility accepted FAP benefits based on her knowledge of other residents. The uncorroborated testimony was insufficient to conclude that the facility was authorized by FNS to accept FAP benefits.

percent of the three meals daily) as part of the institution's normal services." 7 CFR 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. Petitioner's payment of \$200 per month for meals suggests that Petitioner opted to receive meals from his facility. This consideration supports that MDHHS properly denied FAP benefits to Petitioner.

MDHHS acknowledged it assumed that Petitioner was ineligible for FAP benefits solely because he resided in an institution. MDHHS did not establish that Petitioner resided in an institution or that some resident of group living facilities within BEM 615 are eligible for FAP benefits.⁴ The possibility that Respondent meets an exception under BEM 615 renders the denial of FAP benefits to be improper. MDHHS additionally did not establish if Petitioner's residence was authorized by FNS to receive FAP benefits.

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>

⁴ 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.

Given the evidence, MDHHS failed to establish that Petitioner was a resident of an institution and whether Petitioner's group living facility met an exception under BEM 615. Thus, Petitioner's institutional status was not established and the denial of FAP benefits was improper.

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) Re-register Petitioner's FAP application dated [REDACTED] [REDACTED] 2023
- (2) Reprocess Petitioner's application, subject to the finding that MDHHS failed to establish whether Petitioner's residence was authorized by FNS to receive FAP benefits and/or whether Petitioner's residence met an exception under BEM 615; and
- (3) Issue notice and supplements, if any, in accordance with policy.

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

CG/nr



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

Via-Electronic Mail :

DHHS

Yvonne Hill
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30755 Montpelier Drive
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Interested Parties

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BSC4
M. Holden
N. Denson-Sogbaka
B. Cabanaw
MOAHR

Via-First Class Mail :

Petitioner

[REDACTED]
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[REDACTED], MI [REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
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