



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: December 15, 2023
MOAHR Docket No.: 23-008119
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 December 14, 2023, from Lansing, Michigan. The Petitioner was represented by herself. The Department of Health and Human Services (Department) was represented by Brad Reno Hearing Facilitator. Department Exhibit 1, pp. 1-18 was received and admitted.

ISSUE

Did the Department properly close Petitioner's Food Assistance Program (FAP) case because she entered a nursing home?

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 receiving FAP benefits.
2. On [REDACTED] 2023, Petitioner was admitted to [REDACTED]
3. On [REDACTED] 2023, Petitioner was discharged from [REDACTED]
4. On October 26, 2023, Notice of Case Action was sent to Petitioner informing her that her FAP benefits would be closing effective December 1, 2023.

5. On November 6, 2023, Petitioner requested hearing disputing the closure of FAP benefits.
6. On [REDACTED] 2023, Petitioner was admitted again to [REDACTED] and was discharged after approximately one week.

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.

Residents of Institutions

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 Nutrition Service (FNS) to accept FAP benefits.
- The facility is an eligible group living facility; see BEM 615.
- The facility is a medical hospital and there is a plan for the person's return home; see Temporary Absence in this item. BEM 212

Temporary Absence

A person who is temporarily absent from the group is considered living with the group. A person's absence is temporary if all of the following are true:

- The person's location is known.
- The person lived with the group before an absence (newborns are considered to have lived with the group).
- There is a definite plan for return.
- The absence has lasted or is expected to last 30 days or less.

Exception: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home.

In this case, the Department received information that Petitioner was admitted to [REDACTED] with no information about an expected discharge date. Based on that, the Department processed Petitioner's FAP case for closure based on her being in an institution. Petitioner credibly testified at hearing that she was admitted to [REDACTED] on three occasions and was discharged all three times after approximately one week. The Department representative did not dispute Petitioner's testimony and the documents provided by the Department did not refute Petitioner's testimony. Petitioner's stays at [REDACTED] should have been considered a "temporary absence" because she was never expected to be gone from her home for more than 30 days. BEM 212. Therefore, the closure of FAP benefits for Petitioner being in an institution was improper and incorrect.


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 FAP case for being in an institution.

DECISION AND ORDER

Accordingly, the Department's decision is **REVERSED**.

1. Reinstate Petitioner's FAP case going back to the date of closure.
2. Issue a supplement for any missed FAP benefits.

AM/ml



Aaron McClintic
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

Janice Collins
Genesee County DHHS Union St District Office
125 E. Union St 7th Floor
Flint, MI 48502

MDHHS-Genesee-UnionSt-Hearings@michigan.gov

Interested Parties

BSC2
M Holden
B Cabanaw
N Denson-Sogbaka
MOAHR

Via First Class Mail:

Petitioner

[REDACTED]
MI [REDACTED]