

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Claimant,

Reg. No: 2008-27262
Issue No: 3014
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 5, 2009
Allegan County DHS

ADMINISTRATIVE LAW JUDGE: Steven M. Brown

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Kalamazoo, Michigan on February 5, 2009.

ISSUE

Did the Department properly compute Claimant's Food Assistance Benefits (FAP)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. Claimant was a FAP recipient.
2. On June 3, 2008, Claimant completed an Assistance Application, DHS-1171, as part of his review. Claimant answered no to the question of whether everyone in the household buys food and fixes or eats meals together. (Exhibits 3 - 17)

3. Claimant alleged told the Department at the time of his interview, however, that food is purchased, stored and prepared with his ex-wife, with whom he lives. As a result, the Department told Claimant he belonged on the same case as his ex-wife and FAP benefits were denied. (Exhibits 18, 39, 40, 41, 42)

4. On July 23, 2008, the Department received Claimant's hearing request protesting the termination of his FAP benefits.

5. Claimant testified that he was divorced from his ex-wife in [REDACTED], he lived with her mother for a year until she died and then he moved back in with his ex-wife. He testified that he receives [REDACTED] in social security which he turns over to his ex-wife for rent and associated expenses and he receives [REDACTED] in SSI which he uses to buy food. Claimant testified that he buys and prepares his own food and does not share anything with his ex-wife except the refrigerator.

CONCLUSIONS OF LAW

The Food Assistance Program, formerly known as the Food Stamp ("FS") program, is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations ("CFR"). The Department of Human Services ("DHS"), formally known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Program Administrative Manual ("PAM"), the Program Eligibility Manual ("PEM"), and the Program Reference Manual ("PRM").

Group composition is the determination of which persons living together are included in the FAP program group. Parents and their children under 22 years of age **who live together** must be in the same group regardless of whether the child has his/her own spouse or child who

lives with the group. PEM 212 Thus to establish FAP group composition, the Department must consider in part, who lives together and their relationship(s), and whether the people living together purchase and prepare food together or separately. PEM 212

Living together means sharing a home where family members usually sleep and share **any** common living quarters such as a kitchen, bathroom, bedroom or living room. PEM 212 The phrase **purchase and prepare together** is meant to describe persons who customarily share food in common. Persons **customarily** share food in common if:

- . they each contribute to the purchase of food; or
- . they share the preparation of food, regardless of who paid for it; or
- . they eat from the same food supply, regardless of who paid for it.

PEM 212 In general, persons who live together and purchase and prepare food together are members of the same FAP group. PEM 212.

A temporarily absent person is considered to be living in the home. A person's absence is temporary if:

- His/her location is known; and
- There is a definite plan for his/her return; and
- He/she lived with the program group before the absence (newborns are considered to have lived with the group); and
- The absence has lasted or is expected to last 30 days or less.

PEM 212

In the instant case, I do not find that Claimant and his ex-wife are members of the same FAP group. Claimant was divorced from his ex-wife [REDACTED] years ago, lived with her mother for a year and then moved back in with his ex-wife essentially as a tenant for the last [REDACTED] years.

Claimant's application states that he and his ex-wife do not buy or fix/eat together and he testified credibly in kind. I do not find that the Department met its burden in showing that it followed policy in terminating Claimant's FAP benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department improperly terminated Claimant's FAP benefits.

Accordingly, the Department's FAP eligibility determination is REVERSED. The Department shall reinstate Claimant's FAP benefits from the date of closure and supplement Claimant for any lost benefits he was otherwise entitled to receive.

/s/ _____
Steven M. Brown
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: February 10, 2009

Date Mailed: February 19, 2009

NOTICE: Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

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The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

SMB

cc:

