### STATE OF MICHIGAN STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

## ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

Claimant

Reg. No:2009-16876Issue No:3019Case No:IssueLoad No:IssueHearing Date:April 22, 2009Wayne County DHS

# ADMINISTRATIVE LAW JUDGE: Tyra L. Wright

### 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 hearing was held on April 22, 2009. Claimant and her son personally appeared and testified. The Department was represented by a family independence manager and an eligibility specialist.

## **ISSUE**

Did the Department properly determine that Claimant's son should be removed from the Food Assistance Program (FAP) group?

## FINDINGS OF FACT

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

 Claimant is a FAP recipient. She receives \$463 in FAP benefits for a group size of three that includes her 15-year-old son.

- (2) The son attends . (Exhibit 8, 10,11, 13).
- (3) Claimant and the son's father have had joint legal and joint physical custody of him since October 2007. (Exhibits 2 and 3).
- (4) The father informed the Department that the son lives with him and that the son started living with him in 2007. (Exhibits 1 and 13-14). The father also provided a letter to the Department and a calendar indicating nights that the son spent at his residence.
- (5) The son testified that since November 2008, he has stayed with his father during the week at and with his mother and with his mother weekends.
- (6) Claimant contends that the father was not truthful when he gave the Department the calendar stating the nights that his son has spent with him.
- (7) The Department received Claimant's hearing request on March 12, 2009. (Exhibit 22).

#### CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (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 (formerly known as the Family Independence Agency) administers the FAP program pursuant to MCL 400.10, et seq., and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

## **DEPARTMENT POLICY**

You must determine who is included in the Food Assistance Program (FAP) group prior to evaluating the nonfinancial and financial eligibility of everyone in the group.

To establish FAP group composition determine:

- 1. Who lives together.
- 2. The relationship(s) of the people who live together.
- 3. Whether the people living together purchase and prepare food together or separately, and
- 4. Whether the person(s) resides in an eligible living situation. (See "LIVING SITUATIONS" in this item.

**RELATIONSHIPS** The relationship(s) of the people who live together affects whether they must be included or excluded from the group. First determine if they **must** be included in the group. If they are **not** mandatory group members, then determine if they purchase and prepare food together or separately.

### **Parents and Children**

Children include natural, step and adopted children.

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.

### Primary Caretaker

The **primary caretaker** is the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. (PEM 212, p. 1)

### **VERIFICATION REQUIREMENTS**

Verify group composition factors if the information given is questionable. Such factors might include boarder status, age or senior members, and inability to purchase and prepare meals separately.

**Primary Caretaker** Accept the client's statement regarding the number of days per month (on average) a child sleeps in their home. Verify only if questionable or disputed by the other parent. (PEM 212, p. 9).

Under PEM 212, "the primary caretaker is the person who is primarily responsible for

the child's day-to-day care and supervision in the home where the child sleeps more than half of

2009-16876/TW

the days in a calendar month, on average, in a twelve-month period." In this case, the son's father has provided a calendar identifying the nights that the son has stayed with him since January 2008. The Department worker asked Claimant to provide a calendar and she did not do so. Moreover, the son testified that he moved in with his father in 2007 and that since November 2008 spends week nights with his father and weekends with his mother **1000**. Therefore, it is found that at the time the Department calculated the March 2009 budget, the son spent more than half the days in each month with his father, making his father his primary caretaker. Consequently, the Department correctly determined that the son must be removed from Claimant's FAP group, resulting in a reduction in FAP benefits.

#### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly determined that Claimant's son should be removed from the FAP group, effective March 14, 2009.

Accordingly, the Department's action is AFFIRMED.

/s/

Tyra L. Wright Administrative Law Judge for Ismael Ahmed, Director Department of Human Services

Date Signed: 04/28/09

Date Mailed: 04/28/09\_\_\_\_

**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.

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.



TW/dj