

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: 2009-25397
Issue No: 3014
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
July 15, 2009
Jackson County DHS

ADMINISTRATIVE LAW JUDGE: Ivona Rairigh

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 held on July 15, 2009. Claimant personally appeared and testified.

ISSUE

Did the department correctly determine in May, 2009 that the claimant's children could not be included in his 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:

1. Claimant applied for FAP benefits on March 5, 2009 and claimed that his children are living in his home.

2. Claimant provided a statement from his ex-wife and mother of the children saying he takes their four children on Wednesdays, Thursdays and Fridays until 4:00 p.m. every week and every other weekend consisting of Friday, Saturday and Sunday until 4:00 p.m.

3. Claimant's caseworker then contacted claimant's ex-wife by telephone on May 27, 2009 and received information that the claimant takes the children on Wednesdays and Thursdays over night until 4:00 p.m. Friday (2 nights), and then on Wednesdays, Thursdays and Saturdays of next week (4 nights). Children do not go to claimant's house when they are sick and he does not have them 50% of the overnights.

4. Claimant's ex-wife also stated she did not want the children on claimant's Medicaid case as she works for [REDACTED] and has excellent insurance.

5. Claimant's caseworker determined claimant's FAP eligibility without his children included in the FAP group, and notified the claimant of this determination on May 28, 2009. Claimant requested a hearing on June 3, 2009.

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 (DHS or department) 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).

Departmental policy states:

FOOD ASSISTANCE PROGRAM GROUP COMPOSITION

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.)

PEM, Item 212, p. 1.

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. PEM, Item 212, p. 1.

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, Item 212, p. 1.

Information given by claimant's ex-wife to the caseworker was specific in stating that the claimant does not have their children in his custody more than half of the days in a calendar month. Claimant agrees that the statement from his ex-wife as documented by the caseworker is too specific to be incorrect. Claimant was advised by the Administrative Law Judge and department's representative that if his wife writes another statement and tells the department that

he has their children more than half of the time, department will review his FAP case and may add his children to it, if all other eligibility requirements are met. Claimant stated he will get such a statement.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department correctly determined in May, 2009 that claimant's children could not be included in his FAP group.

Accordingly, department's action is AFFIRMED, and it is SO ORDERED.

/s/
Ivona Rairigh
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: July 21, 2009

Date Mailed: July 21, 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.

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.

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