

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: 2009-19665

Issue No: 3014

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

June 1, 2009

Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Jeanne M. VanderHeide

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 Detroit, Michigan on June 1, 2009. The Claimant appeared and testified. Monique Jones, FIS appeared on behalf of the Department.

ISSUE

Whether the Department properly calculated the Claimant's Food Assistance ("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. The Claimant is a FAP recipient.
2. On 4/9/09, Claimant reported that her granddaughter had been living with her since January 2009.
3. Claimant testified that her 18 year old grandson was also living with her in April 2009.

4. Claimant's daughter receives child support for the 18 year old grandson.
5. The school records indicate an address other than Claimant for the grandson.
6. Claimant testified that she did not change the school records for the grandson as it was only a matter of months until he graduated.
7. Claimant testified that she and the grandson purchase and prepare meals together.
8. A food assistance budget was generated on 4/15/09 for a group size of 2. The grandson was not included in this budget.
9. On April 6, 2009, the Department received the Claimant's Request for Hearing.

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. PEM 212, p. 1 The relationship(s) of the people who live together affects whether they must be included or excluded from the group. First, it must be determined if they must be included in the group. If they are not mandatory group members, then it must be determined if they purchase and prepare food together or separately. Spouses and primary caretakers of minor children are considered mandatory group members. PEM 212, p. 1. 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. A caretaker is a related or unrelated person who provides care or supervision to a child(ren) under 18 who lives with the caretaker but who is not a natural, step or adopted child. A person acting as a parent and the child(ren) for whom he acts as a parent who live with him must be in the same group. PEM 212, p. 1. The client's statement about caretaker status should be accepted unless questionable or disputed by another caretaker. PEM 212, p. 3.

When primary caretaker status is questionable or disputed, the determination should be based on the evidence provided by the caretakers and each caretaker should be given the opportunity to provide evidence supporting his/her claim. PEM 212, p 10. A court order regarding visitation/custody, school records, day care records or medical records can be utilized as verification for caretaker status. PEM 212, pp. 10-11.

PEM 212, sets forth examples of when an individual should be considered the primary caretaker:

Example 2: Eric is ten years old. His mom works during the week. Eric's mom drops him off at his grandmother's house on Sunday evening and picks him up on Friday evening. Eric's grandmother is primarily responsible for his care and supervision in the home where he sleeps more than half the days in a month when averaged over the next twelve months. Eric's grandmother is the primary caretaker. His mom is considered an absent caretaker.

PEM 212, p. 4.

In the instant case, Claimant claims that she is the father and primary caretaker of her grandson. The mother is not contesting that the Claimant is the primary caretaker. The undersigned finds that Claimant testified credibly. However, verification of another caretaker was presented through child support payments and school records. Instrumental in this Administrative Law Judge's decision is Example 2 cited above. While child support generally follows the custodial parent, situations exist where the custodial parent may retain child support

payments, but there is also another primary caretaker. Changing the school records may even have the effect of disturbing the existing custody decision.

Based upon the foregoing facts and relevant law, it is found that the Department's determination is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that Claimant is the primary caretaker of her grandson and the grandson should have been included in the FAP group composition.

Accordingly, it is ORDERED:

1. The Department's FAP determination is REVERSED.
2. The Department shall recalculate the Claimant's FAP benefits from 4/9/09 to include a group size of three and supplement the Claimant for any lost benefits she was otherwise entitled to receive.

/s/

Jeanne M. VanderHeide
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 06/10/09

Date Mailed: 06/15/09

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.

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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.

JV/dj

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