

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: 2009-29196
Issue No: 3014
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 11, 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 August 11, 2009. Claimant personally appeared and testified.

ISSUE

Did the department correctly deny claimant's Food Assistance Program (FAP) application in May, 2009?

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 May 15, 2009, and listed only himself on the application.
2. On May 15, 2009, department computed a FAP budget for a household of one counting claimant's employment income. Claimant's gross employment income was determined

to be \$1,769 per month, exceeding FAP gross income limit for his size household of \$1,734 per month.

3. Department denied claimant's FAP application due to excess income on May 15, 2009. Claimant requested a hearing on June 5, 2009, stating that he has joint custody of his two children and fixes them dinner almost every night, and he pays child support and does not have much money left to buy food.

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).

Claimant stated in his hearing request and during the hearing that his two children ages 15 and 12 come over to his house and have dinner with him, that he must pay his rent and child support out of his income, and that he does not have much money left for food. Claimant does state that his ex-wife has their children living with her more than half of the time.

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.

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. 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.

LIVING WITH

Living with means sharing a home where family members usually sleep and share **any** common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share **only** an access area (e.g., entrance or hallway) or non-living area (e.g., laundry) are **not** considered living together.

See PEM 617 for policy regarding persons in other group living situations. PEM, Item 212, p. 2.

Temporary Absence

A person who is temporarily absent from the group is considered living with the group.

A person's absence is temporary if:

- . his location is known; **and**
- . he lived with the group before his absence (newborns are considered to have lived with the group); **and**
- . there is a definite plan for his return; **and**
- . the absence has lasted or is expected to last 30 days or less.

Exception 1: 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. PEM, Item 212, p. 2.

DETERMINING PRIMARY CARETAKER

When a child spends time with multiple caretakers who do not live together (e.g., joint physical custody or parent/grandparent), determine a Primary Caretaker. Only one person can be the Primary Caretaker and the other caretaker(s) is considered the Absent Caretaker(s). The child is **always** in the FAP group of the Primary Caretaker. If the child's parent(s) is living in the home, he/she must be included in the FAP group.

Exception: If otherwise eligible, the Absent Caretaker may receive FAP benefits for the child, when the child is visiting the Absent Caretaker for more than 30 days (i.e., not temporarily absent from the Primary Caretaker's home).

Determine a Primary Caretaker by using a twelve-month period. The twelve-month period begins when a Primary Caretaker determination is made. To determine the Primary Caretaker:

- . Ask the client how many days the child sleeps at his/her home in a calendar month.

- . Accept the client's statement unless questionable or disputed by another caretaker.

Note: When a caretaker works during a child's normal sleep hours, include the nights the child sleeps away from home when due solely to the caretaker's employment as nights slept in the home of the caretaker. See Example 3.

- . If Primary Caretaker status is questionable or disputed, verification is needed.
- . Allow both caretakers to provide evidence supporting his/her claim.
- . Base your determination on the evidence provided by the caretakers. See "Verification Sources."
- . Document who the Primary Caretaker is, in the case record.

If the child spends virtually half of the days in each month, averaged over a twelve-month period with each caretaker, the caretaker who applies and is found eligible first, is the Primary Caretaker. The other caretaker(s) is considered the Absent Caretaker(s). PEM, Item 212, p. 3.

Changes in Primary Caretaker

Re-evaluate Primary Caretaker status when:

- . a new or revised court order changing custody or visitation is provided, **or**
- . there is a change in the number of days the child sleeps in another caretaker's home and the change is expected to continue, on average, for the next twelve months; **or**
- . a second caretaker disputes the first caretaker's claim that the child(ren) sleeps in his/her home more than half the nights in a month, when averaged over the next 12 months, **or**
- . a second caretaker applies for assistance for the same child.
PEM, Item 212, p. 4.

Departmental policy as applied to claimant's circumstances, i.e. that his children reside with their mother more than half of the time, and indeed appear to be sleeping at their mother's

house majority of the time as the claimant testified that he lives in a one bedroom apartment and goes to work early in the morning, does not allow for claimant's children to be included in his FAP group when determining his FAP eligibility.

Claimant also has gross employment income that exceeds the gross income limit set by the federal government for his size household of one. Claimant therefore cannot pass the gross income test which would allow the department to proceed further into the FAP budget and allow claimant's child support and shelter expenses, possibly resulting in FAP eligibility. BEM 500, 550, and 554.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department correctly denied claimant's FAP application in May, 2009.

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

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

Date Signed: August 12, 2009

Date Mailed: August 13, 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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