

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201037519
Issue No.: 3003/3014
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: July 28, 2010
Wayne County DHS (57)

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the claimant's request for a hearing. After due notice, a telephone hearing was held on July 28, 2010. The claimant appeared and testified. [REDACTED], FIM and [REDACTED], ES appeared and testified on behalf of the Department.

ISSUE

1. Was the claimant's FAP allotment computed and allocated correctly?
2. Did the Department properly remove the Claimant's son from the Claimant's FAP group finding he was placed in Foster Care?

FINDINGS OF FACT

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

- 1) The Claimant was a FAP recipient and his FAP benefits were reduced from \$367 to \$200 per month by the Department on April 5, 2010 because it determined that the Claimant's son was placed in Foster Care. The Claimant and his son both receive RSDI. Exhibit 3(FAP budget group of 2) and Exhibit 4 (FAP budget Group of 1). Exhibit 5 (Notice of Case Action 4/6/10).
- 2) An Order of the Juvenile Court was entered on April 16, 2010 after a hearing was held on March 18, 2010 which placed the Claimant's son on a tether and in the custody of his father the Claimant. Exhibit 2

- 3) The initial hearing regarding the Claimant's son occurred on March 18, 2010 and the order was not entered and signed by the Judge until April 16, 2010.
- 4) The Order although confusing does not place the Claimant's son in foster care.
- 5) The Claimant's son was out of the home for 6 weeks after he was released from boot camp in December 2009. The Claimant was unsure of the exact dates his son was absent due to being in trouble.
- 6) As of the March 18, 2010, the Claimant's son was placed in the custody of his parent the Claimant, [REDACTED] and was not in foster care. Based on the Claimant's unrebutted testimony the Claimant's son currently resides with the claimant and has done so since the Court hearing on March 18, 2010.
- 7) The Department's determination that the Claimant's FAP benefits should be reduced from \$367 to \$200 based on the 3 page court order which it interpreted to place the Claimant's son in Foster Care was in error. The Order does not place the Claimant's son in foster care, but instead places the Claimant's son in his custody as the order indicates the child is required to live in parents and abide by rules and curfews and attend schools while on a tether. Exhibit 2
- 8) As to the whereabouts of the Claimant's son prior to March 18, 2010 and whether he was in custody of the juvenile court or otherwise out of the home cannot be determined by the record presented by the Department, except that by the Claimant's own admission the Claimant's son was out of the home for six week after he returned home in December 2009. The Claimant did not report his son's absence to the Department at that time.
- 9) The budget prepared by the Department for the period April 1, 2010 for a group of 2 has been review and is correct. Exhibit 3 The FAP budget authorized FAP benefits in the amount of \$367 per month.
- 10) The Claimant requested a hearing on May 1, 2010 after the Department reduced the Claimant's FAP benefits to \$200 when it removed the Claimant's son from his FAP group on April 5, 2010.

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 CML 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).

When determining eligibility for FAP benefits, the household's total income must be evaluated. All earned and unearned income of each household member must be included unless specifically excluded. BEM 500. A standard deduction from income of \$132 is allowed for households of claimant's size. Certain non-reimbursable medical expenses above \$35 a month may be deducted for senior/disabled/veteran group members. Another deduction from income is provided if monthly shelter costs are in excess of 50% of the household's income after all of the other deductions have been allowed, up to a maximum of \$459 for non-senior/disabled/veteran households. BEM, Items 500 and 554; RFT 255; 7 CFR 273.2. Only heat, electricity, sewer, trash and telephone are allowed deductions. BEM 554. Any other expenses are considered non-critical, and thus, not allowed to be deducted from gross income. Furthermore, RFT 255 states exactly how much is allowed to be claimed for each shelter expense.

The Department erred when it removed the Claimant's son from his FAP group as of April 5, 2010. The Department relied on a court order issued by the Wayne County Juvenile Court which it concluded placed the Claimant's son in foster care. The Order was misconstrued by the Department and the Order, in paragraph 22, places the Claimant's son in his custody.

The Claimant's son was never in foster care and the Department did not establish that he was. The Claimant should have received FAP benefits for a group of two persons from and after March 18, 2010. On April 5, 2010 the Department improperly took action to remove the claimant's son from his FAP group. Based on the language of the court Order it must be found that on and after March 18, 2010 the Claimant's son was released to him, was on a tether and thus was living with him. That being the case the Department must include the Claimant's son in the FAP group from and after that date and recompute and supplement the Claimant's FAP benefits from that date forward.

As the Administrative Law Judge has reviewed the FAP budget for the period April 1, 2010 through April 30, 2010 for a FAP group of 2 and finds that it is correct, it is found that after May 18, 2010 the Claimant's son must be included in his FAP group and that the Department must supplement the Claimant's FAP benefits after that date. The correct amount of FAP benefits the Claimant should have received after May 18, 2010 is \$367. Exhibit 3.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's calculation of the Claimant's FAP allotment was incorrect beginning May 18, 2010 and that the Department is required to supplement the Claimant's FAP benefits from and after that date to include the Claimant's son in his FAP group and to otherwise supplement the Claimant for FAP benefits he was otherwise entitled to receive.

Accordingly, the Department's decision is REVERSED.

The Department is ORDERED to utilize the FAP budget it prepared for the Claimant's FAP group dated 4/1/10 for a FAP group of 2 persons, which determines the Claimant's FAP benefits to be \$367 per month. The Department is ordered to issue a FAP supplement from and after March 18, 2010 for any FAP benefits the Claimant was otherwise entitled to receive during the period through the date of the hearing.



Lynn M. Ferris
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: 08/02/2010

Date Mailed: 08/02/2010

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 of the rehearing decision.

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