

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: 201011806

Issue No: 3015

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

January 25, 2010

Wayne County DHS (19)

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 January 25, 2010. The Claimant appeared and testified. Elaine Harris, FIM and Tammy Guyton, ES, appeared on behalf of the Department.

ISSUES

Whether the Department properly denied the Claimant's Food Assistance ("FAP") benefits based on Claimant's children receiving SSI payments.

FINDINGS OF FACT

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

1. Claimant applied for FAP benefits on or around September, 2009.
2. A budget was compiled which included RSDI and VA income attributable to Claimant's Children, but payable to the Children's father. (Exhibit 1)

3. Claimant testified that she and the children's father have joint physical and legal custody of the minor children.
4. Claimant testified that the children's RSDI and VA benefits are paid directly to the father and that Claimant does not receive any benefit from those payments.
5. Claimant testified that she has a household group of 4.
6. Claimant testified that she receives unemployment compensation in the amount of \$774.00 biweekly.
7. Claimant testified that she pay \$650.00 in rent each month and that she is responsible for the electric and phone bills.
8. The Department denied Claimant's application for FAP benefits based on excess income effective October 1, 2009.
9. The Department received Claimant's hearing request on October 15, 2009.

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 Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Reference Tables ("RFT").

FAP benefits are paid based on an individual's family group. The relationship of the people who live together affects whether they must be included or excluded from the group. People included in the group include spouses and children (natural, step and adopted) who

purchase and prepare food together. 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 212, p. 1. The relationship(s) of the people who live together affects whether they must be included or excluded from the group. In order to determine a group composition, the Department must first determine if the individual must be included in the group. If they are not mandatory group members, the Department must determine if the individuals purchase and prepare food together or separately. PEM 212, p. 1. 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). BEM 212, p. 3. Income of all group members is generally counted in the FAP Budget. Income means a benefit or payment received by an individual which is measured in money. BEM 500, p. 3.

For a child to be eligible to receive payments under a parent's RSDI benefits, the children must be dependent upon the insured person. This is based upon whether the children are receiving contributions for support. 20 CFR 404.366. The RSDI recipient (insured) makes a contribution for the minor child's support if:

- 1) The insured gives some of his or her own cash or goods to help support the child. Support includes food, shelter, routine medical care, and other ordinary and customary items needed for the child's maintenance.
- 2) The contributions are made regularly and are large enough to meet an important part of the child's ordinary living costs.

20 CFR 404.366(a)

The insured person provides one-half of the child's support if he or she makes regular contributions for the ordinary living costs; the amount of the contributions equals or exceeds one

half of the ordinary living costs; and any income the child has (other than from the insured person) is one half or less of the ordinary living costs. 20 CFR 404.366(b). Furthermore, a child lives with the insured if the child ordinarily lives in the same home with the insured and the insured is exercising, or has the right to exercise, parental control and authority over the child's activities. 20 CFR 404.366(c). The parent with whom the child primarily lives is entitled to receive the RSDI payment for the children.

In the subject case, the Claimant and the children's father share equally in the custody and parenting time of the children. Under department rules, therefore, either Claimant or the father would be able to have the kids included in his or her FAP group depending on who filed first for benefits. In a situation where the Claimant had primary custody of the children, the RSDI benefits would be paid directly to the Claimant and would rightly be included in the household income. In this case, however, the benefits are paid to the father as the children live with him half time. While the children receive benefits in their name, the money is actually received by the father who is clearly not a member of Claimant's household. Were the father the one who had filed first for FAP benefits and he was receiving the RSDI for the children, then the children's income would be counted in his group. However, the income cannot be counted twice. As it would be counted for the father if he filed first, it should not be counted for the Claimant.

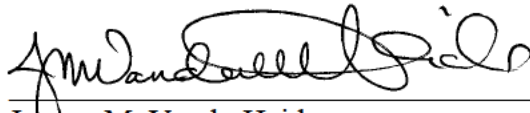
Accordingly, based upon the foregoing facts and relevant law, it is found that the Department's determination is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department improperly denied the Claimant's FAP benefits.

Accordingly, it is ORDERED:

1. The Department's 10/1/09 FAP denial is REVERSED.
2. The Department shall reopen and reprocess Claimant's FAP case from the date of application, 9/29/09.
3. The Department shall not include RSDI or VA income attributable to the children that is paid in the name of the children's father.
4. The Department shall supplement Claimant with any lost benefits she was otherwise entitled to receive.



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

Date Signed: March 3, 2010

Date Mailed: March 4, 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 date of the rehearing decision.

JV/hw

cc:

