

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.: 2010-29355
Issue No.: 3014
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 28, 2010
Oakland County DHS (02)

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 April 28, 2010. Claimant appeared and testified. [REDACTED], appeared on behalf of the Department of Human Services ("Department").

ISSUE

Whether the Department properly denied Claimant's children as group members on his Food Assistance Program ("FAP") benefits case?

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 for himself and his two minor children.
2. Claimant and his ex wife have joint physical custody of the minor children. (See Judgment of Divorce, Exhibit 1, pp. 7-10).

3. Claimant's minor children were already on the mother's FAP case.
4. On January 15, 2010, the Department denied FAP benefits for the minor children. The Department issued FAP benefits for Claimant for a group size of one as Claimant was determined not to be the primary caretaker of the minor children pursuant to BEM 212. (Exhibit 1, p. 3).
5. On February 5, 2005, the Department received 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" or "Department"), formerly 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").

Group composition is the determination of which persons living together are included in the FAP program group. BEM 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. BEM 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. *Id.* 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. BEM 212 at 10.

When a child spends time with multiple caretakers who do not live together (e.g., joint physical custody, parent/grandparent, etc.), the Department must determine the primary caretaker. 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. BEM 212, p. 3.

In the instant case, the Judgment of Divorce is clear that Claimant and his ex-wife share equally in the physical custody of the children. Unfortunately, when Claimant applied for FAP benefits, the minor children were already included in the FAP group of the mother. Pursuant to BEM 212, the mother is then considered the primary caretaker and the children must be included in her group, not Claimant's.

Claimant noted that, as a result of the kids being included in their mother's FAP group, he has been pursued for child support in order to reimburse the State for the Food Stamps that the mother and minor children are receiving. Claimant indicated that he does not have enough money on which to live and, further, that he is suffering double as a result of being the last to file for FAP benefits, despite being equally entitled to the children. The undersigned appreciates and sympathizes that economic times are difficult and that this current policy puts an extraordinary burden on Claimant's finances. While this Administrative Law Judge does not necessarily agree

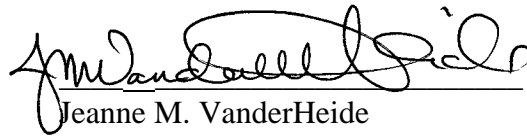
with the current regulations, the undersigned finds that the Department properly calculated benefits.

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

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department properly calculated Claimant's FAP benefits for a group size of one, based on the determination that the mother of the minor children was the primary caretaker.

Accordingly, the Department's FAP determination is AFFIRMED.



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

Date Signed: May 11, 2010

Date Mailed: May 12, 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.

JMV/pf

cc:

