

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: 2010-31541
Issue No: 3014
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 13, 2010
Bay County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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 May 13, 2010. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly determine that the claimant's child should not be included in his FAP program group?

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 applied for FAP for himself and his son on February 11, 2010.
(Department Exhibit 1)
2. The department opened the claimant's FAP case, but did not include his son, as he was active on his mother's case.

3. The claimant requested a hearing on March 15, 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 (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).

Department policy states:

Caretaker status is determined by averaging how many nights the child sleeps in each home over the course of a year. The primary caretaker will have the children more than half the overnights. BEM 212. Department policy also indicates that when the primary caretaker status is disputed, verification is necessary. BEM 212.

In this case, the child's mother had been receiving benefits with the child on her case. However, the claimant testified that he applied for benefits for himself and his son when a new custody order was issued. Initially, the department indicated that they had never received information disputing the parenting arrangement. However, once the department worker looked in the case file, he discovered an Ex Parte Parenting Time Order had been submitted by the claimant to the department on March 9, 2010.

The department faxed this Administrative Law Judge a copy of the Ex Parte Order, which was reviewed by this Judge. While the mother was granted "reasonable parenting time", this parenting time was NOT to include any overnight time. It is clear that the department was then

in possession of information which showed the claimant should be granted primary caretaker status. This, in turn, means that the department should have added the child to his father's case when he applied for benefits.

It is noted that the child's mother may have received benefits she was not entitled to receive. If the amount is equal or greater to the recoupment threshold amount, the monies may be recouped from the child's mother through the department's recoupment procedures.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly determined that the claimant's child should not be included in his FAP program group.

Accordingly, the department's actions are REVERSED. The department shall:

1. Add the claimant's son to his program group as of the date of FAP eligibility.
2. Issue the claimant any retroactive FAP benefits that he is entitled to receive once his son is added to each month of FAP eligibility.

SO ORDERED.

/s/
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: May 22, 2010

Date Mailed: May 25, 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.

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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.

SLK [REDACTED]

cc: [REDACTED]