

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: 201012114
Issue No: 3052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 7, 2009
Isabella County DHS

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 hearing was held on January 7, 2009. Claimant appeared and testified.

ISSUE

Was Claimant over-issued \$496.00 of Food Assistance Program (FAP) benefits that she was not entitled to, because she gave incorrect or incomplete information to the Department of Human Services?

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 was an ongoing recipient of Food Assistance Program (FAP) benefits. Beginning in February, 2007, based on Claimant's report to the Department, her two sons were included in her Food Assistance Program (FAP) benefit group. Claimant also

submitted an application to obtain health benefits for the children. The children HAD NOT previously been part of a benefit group under the ex-husband.

(2) In March, 2008 Claimant's ex-husband sent an Email to the Department stating that Claimant did not have the two children more than 51% of the time until January 17, 2008.

(3) In April, 2008 the Department case worker received information from the children's school. A current Verification of Student Information showed that Claimant was listed as the responsible parent. During a verbal conversation with school staff the Department case worker was told that the children's father was the responsible parent until January 17, 2008 and the children moved in with Claimant when the ex-husband took a job out of state.

(4) On April 22, 2008, the Department case worker made an over-issuance referral on the case.

(5) On October 12, 2009, Claimant was sent a Notice of Over-issuance.

(6) On October 15, 2009, Claimant submitted a request for hearing.

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).

In this case, the Department seeks recoupment of Food Assistance Program (FAP) benefits. The Department is taking this action because they determined that Claimant was not the primary caretaker of her two children between February 2007 and January 2008, and therefore was not eligible to have them included in her benefit group. Department policy provides the following guidance for case workers. The Department's policies are available on the internet through the Department's website.

BEM 212 FOOD ASSISTANCE PROGRAM GROUP COMPOSITION

DEPARTMENT POLICY

Bridges will assist you in determining who must be included in the Food Assistance Program (FAP) group prior to evaluating the nonfinancial and financial eligibility of everyone in the group.

FAP group composition is established by determining:

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).

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.

Spouses

Spouses who are legally married and live together **must** be in the same group.

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.

Note: For ongoing and intake applications where the child is not yet 22, they are potentially eligible for their own case, the month after turning 22.

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.

DETERMINING PRIMARY CARETAKER

When a child spends time with multiple caretakers who do not live together (e.g., joint physical custody, parent/grandparent, etc.), 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 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).

Example 1: Patty normally lives with Mom and they receive FAP benefits. Dad has scheduled visitation every other weekend, two weeks at Christmas, two weeks at Easter and eight weeks in the summer. When Patty is gone for the eight weeks in the summer, Dad (absent caretaker) could apply and receive FAP benefits with Patty in his group, if otherwise eligible. Patty would have to be removed from Mom's case because she **no** longer meets the definition of temporary absence.

Note: If in the example above, Patty returns every other weekend to visit with Mom during the summer visitation with Dad, she remains on Mom's case (i.e., she is temporarily absent).

Example 2: Eric is ten years old. His mom works during the week. Eric's mom drops him off at his grandmother's house on Sunday evening and picks him up on Friday evening. Eric's grandmother is primarily responsible for his care and supervision in the home where he sleeps more than half the days in a month when averaged over the next twelve months. Eric's grandmother is the primary caretaker. His mom is considered an absent caretaker.

Example 3: Mom works during Eric's normal sleep hours, and Eric is only at Grandma's to sleep while mom works (he is not there all week). Mom is the primary caretaker. Grandma is providing child care.

VERIFICATION REQUIREMENTS

Verify group composition factors if the information given is questionable. Such factors might include boarder status, age or senior members, and inability to purchase and prepare meals separately.

Primary Caretaker

Accept the client's statement regarding the number of days per month (on average) a child sleeps in their home. Verify only if questionable or disputed by the other parent.

VERIFICATION SOURCES

Verify the factors below using one of the listed sources

Primary Caretaker

When primary caretaker status is questionable or disputed, base the determination on the evidence provided by the caretakers. Give each caretaker the opportunity to provide evidence supporting his/her claim. Suggested verifications include:

- The most recent court order that addresses custody and/or visitation.
- School records indicating who enrolled the child in school, first person contacted in case of emergency, and/or who arranges for child's transportation to and from school.
- Child care records showing who makes and pays for child care arrangements, and who drops off and picks up the child(ren).
- Medical providers' records showing where the child lives and who generally takes the child to medical appointments.

In this case, Claimant has raised questions regarding the evidence used by the Department in its determination. There is evidence in the record from three sources, regarding how much time the children stayed with Claimant during the period in question. Claimant testified that the children stayed with her more than half the time starting in January, 2007 because of her ex-husband's work schedules. There is an Email in evidence from the ex-husband dated 3/26/08 (page 37). There is testimony from the Department case worker regarding what she was told and a page of case notes made by the worker regarding her conversation with the school (page 35).

[Admission of evidence during an Administrative](#) Law Hearing on Department of Human Services' matters is not strictly governed by the Michigan Rules of Evidence. In accordance

with the Michigan Administrative Procedures Act, an Administrative Law Judge may admit and give probative effect to any evidence. However, the final decision and order must be supported by and in accordance with competent, material, and substantial evidence.

Black's Law Dictionary defines competent evidence as: "That which the very nature of the thing to be proven requires, as, the production of writing where its contents are the subject of inquiry. Also generally, admissible or relevant, as the opposite of incompetent."

Black's Law Dictionary defines incompetent evidence as: "Evidence which is not admissible under the established rules of evidence; evidence which the law does not permit to be presented at all, or in relation to the particular matter, on account of lack of originality or of some defect in the witness, the document, or the nature of the evidence itself.

The Michigan Rules of Evidence include:

Rule 102 Purpose

These rules are intended to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 601 Witnesses; General Rule of Competency

Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

Rule 602 Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 801 Hearsay; Definitions

The following definitions apply under this article:

- (a) *Statement*. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.
- (b) *Declarant*. A "declarant" is a person who makes a statement.
- (c) *Hearsay*. "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Rule 802 Hearsay Rule

Hearsay is not admissible except as provided by these rules.

In this case, the Department is acting in accordance with their established policies and have NOT taken any inappropriate actions. However, when Claimant requested a hearing on this issue, the sufficiency of the evidence to support the proposed action changed due to the Michigan Administrative Procedures Act. It is undisputed that until March 2008 there was a Court Order in place that provided joint physical custody of the children and showed Claimant was to have the children on Wednesdays and every other weekend. The question of fact for determination in this hearing is whether Claimant was the primary caretaker of the children in accordance with Department of Human Services' policy during the period of February 2007 through January 2008.

Claimant's testimony was presented at the hearing. Claimant was available to be questioned by Department representatives and this Administrative Law Judge. Claimant provided testimony that beginning in January, 2007 the children were staying with her a majority of the time because her ex-husband was working nights and asked her to watch the children while he worked. Claimant described that at different times her ex-husband worked evenings

and nights doing investigation and surveillance work of people receiving Worker's Compensation, worked nights in a bar, and worked at a law firm.

The Email from Claimant's ex-husband to the Department states ". . . [REDACTED] has only been the primary caretaker if this is defined as more than 51% of the time since January 17th, 2008 . . . When school is in session it is this basic. 9 overnights with me 5 with her over a two week period. She would have them after school on my overnight for 3 hours. This order has been in effect and followed to the tee since 2005." Claimant's ex-husband was not available to be questioned by Department representatives or this Administrative Law Judge.

The information received from the children's school parallels the evidence in Claimant's ex-husband's Email. The information from the school is hearsay evidence and may only be used for its probative value.

During the period in question, Claimant's ex-husband had Court Ordered custody that would establish him as the primary caretaker. Based on the competent testimony of Claimant during the hearing, the children were present in her home overnight a majority of the time because her ex-husband was working nights. The Department policy cited above clearly states:

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.

Example 3: Mom works during Eric's normal sleep hours, and Eric is only at Grandma's to sleep while mom works (he is not there all week). Mom is the primary caretaker. Grandma is providing child care.

On all the nights the children spend with Claimant when their father was working, Claimant was providing child care. Regardless of the number of nights Claimant provided child care for her ex-husband, the ex-husband is credited with those nights for purposes of determining

a primary caretaker. In this specific set of circumstances, Claimant was not the primary caretaker of her children between February, 2007 and January, 2008.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides Claimant was over-issued \$496.00 of Food Assistance Program (FAP) benefits that she was not entitled to, because she gave incorrect or incomplete information to the Department of Human Services.

It is ORDERED that the actions of the Department of Human Services, in this matter, are UPHELD.

/s/ _____
Gary F. Heisler
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: January 25, 2010

Date Mailed: January 27, 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.

GFH 

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