

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

██████████,

Claimant,

Reg No: 201013317

Issue No: 3002

Case No: ██████████

Load No: ██████████

Hearing Date:

February 4, 2010

Wayne County DHS

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 February 4, 2010. The Claimant appeared and testified. Also present was Claimant's fiancée, ██████████. Stella Brown-Jackson, FIM and Angela Hinson, AP Worker, appeared on behalf of the Department.

ISSUE

Whether the Department properly calculated the Claimant's Food Assistance ("FAP") benefits from July, 2009 through the present?

FINDINGS OF FACT

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

1. The Claimant was an active FAP recipient.

2. On [REDACTED], Claimant was appointed foster parent to her fiancé's three children who then came to live with Claimant and her fiancé. (Exhibit 1). Claimant immediately reported the additional three children to her caseworker and provided supporting verification.
3. Claimant testified that she followed up with the Department in July and August of 2009 regarding the change to her FAP group.
4. Claimant gave birth in [REDACTED], 2009.
5. Claimant testified that she called the Department over twenty (20) times regarding adding the three minor children to her FAP case.
6. The three minor children were left on their mother's FAP case until 11/30/09.
7. Claimant's FAP case was finally adjusted effective December, 2009.
8. Claimant is not contesting the amount of benefits in her current FAP award.
9. On December 1, 2009, the Department received the Claimant's Request for Hearing protesting the termination of FAP benefits.

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").

The federal regulations define household income to include earned and unearned income. 7 CFR 273.9(b). All monthly income must be converted to a nonfluctuating monthly amount. Only 80% of earned income is counted in determining FAP benefits. BEM 550. Under 7 CFR 273.9 deductions for excess shelter are also made. BEM 554.

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. The FAP group may choose to include or exclude a foster child whose foster parent is a group member. If excluded, the foster child is not eligible for FAP as a separate group, and the foster care payment is not income to the group. BEM 212, p. 1.

Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. A supplemental issuance may be necessary in some cases. If verification is returned late, the increase must affect the month after verification is returned. BEM 220, p. 5. For FAP only, the client may request a hearing disputing the current level of benefits at any time within the benefit period. BAM 600, p. 4.

In the present case, Claimant testified credibly that she reported and provided verification that she had been appointed a foster parent for her fiance's three minor children. It is undisputed that the three minor children were still on the mother's FAP case through 11/30/09. However, since they were not living with their mother, the mother was not entitled to have them in her FAP group. Moreover, the Department is entitled to recoup for the extra benefits she received during the time that the children were not living with her. Claimant provided timely verification that the

children were living with her and the Department should have taken action to remove the children from the mother's FAP group and place them in Claimant's FAP group.

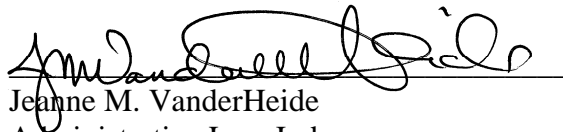
Accordingly, based upon the foregoing facts and relevant law, it is found that the Department's determination is REVERSED.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, determines that the Department improperly increased Claimant's FAP benefits effective December, 2009 rather than July, 2009.

Accordingly, it is ORDERED:

1. The Department's FAP action effective 12/09 is REVERSED.
2. The Department shall effectuate the 12/09 FAP increase as of July 1, 2009 and supplement the Claimant for 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: 03/10/10

Date Mailed: 03/15/10

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.

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