

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: 2010-14272
Issue No: 3052
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
February 4, 2010
St Clair 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 February 4, 2010. Claimant and her mother appeared and testified.

ISSUE

Did the Department of Human Services properly determine that Claimant receive an agency error over-issuance of \$1100 in Food Assistance Program (FAP) benefits that the Department of Human Services is entitled to recoup?

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. Claimant's date of birth is July 29, 1988. Claimant's benefit group consisted of herself and her child.

(2) On September 30, 2008, Claimant submitted a Semi-Annual Contact Report (DHS-1046) which stated she had moved into her grandmother's home and that her mother was also a member of the household. The Department did take any action regarding the change in group composition.

(3) On April 3, 2009, Claimant submitted a re-determination application showing she was still in a household with her grandmother, mother, brother, and child. The application stated that all members of the household buy food and fix or eat meals together. The application requested Medical Assistance (MA) and Food Assistance Program (FAP) benefits for Claimant, her child, Claimant's mother, and Claimant's brother. The Department requested verification of income for other members of the household. Verification was not received before the end of Claimant's certification period ended. Claimant's Food Assistance Program (FAP) case closed automatically. When the agencies error to address group composition was discovered, the case was referred to a recoupment specialist.

(4) On November 13, 2009, Claimant was sent a Notice of Over-Issuance and associated packet.

(5) On November 30, 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 Bridges

Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Program Reference Manual (PRM).

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.

PAM 705 AGENCY ERROR OVERISSUANCES

DEPARTMENT POLICY

All Programs

Recoupment policies and procedures vary by program and overissuance (OI) type. This item explains agency error OI processing and establishment. [PAM 700](#) explains OI discovery, OI types and standards of promptness. [PAM 715](#) explains client error, and [PAM 720](#) explains Intentional Program Violations.

Definition

All Programs

An **agency error** OI is caused by incorrect actions (including delayed or no action) by DHS or DIT staff or department processes. Some examples are:

- Available information was not used or was used incorrectly.
- Policy was misapplied.
- Action by local or central office staff was delayed.
- Computer or machine errors occurred.

- Information was not shared between department divisions (services staff, Work First! agencies, etc.).
- Data exchange reports were not acted upon timely (Wage Match, New Hires, BENDEX, etc.). If unable to identify the type of OI, record it as an agency error.

AGENCY ERROR EXCEPTIONS

FIP, SDA, CDC and FAP

Agency error OIs are not pursued if the estimated OI amount is less than \$500 per program.

In this case, there is no dispute that Claimant was under 22 years of age, that Claimant and her mother were living together, or that all the household members were purchasing and preparing food together. The Department policy cited above clearly states those circumstances require Claimant and her mother to be in the same Food Assistance Program (FAP) benefit group. There was clearly a group composition problem during the alleged over-issuance period.

The Department has determined that all of the Food Assistance Program (FAP) benefits issued to Claimant during the over-issuance period were over-issued because Claimant was not eligible for any benefits. An over-issuance (OI) is the amount of benefits issued to the client group in excess of what they were eligible to receive. The Department has not established that a benefit group including at least Claimant, her mother, and her child would be ineligible for any Food Assistance Program (FAP) benefits.

To determine if there was an over-issuance in this particular case the Department needs to get information on all members of the household and run a financial eligibility budget for the group. Only then can the amount of benefits Claimant received be compared to the eligibility amount and the question of over-issuance determined.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services DID NOT properly determine that Claimant receive an agency error over-issuance of \$1100 in Food Assistance Program (FAP) benefits.

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

It is further ORDERED that any recoupment action being taken by the Department of Human Services stop and no further recoupment action be taken until a proper determination is made on the question of whether an over-issuance occurred.

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

Date Signed: March 1, 2010

Date Mailed: March 10, 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.

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