

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: 20101474
Issue No: 3014;2026
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 19, 2009
Oakland County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 November 19, 2009.

ISSUE

Did the Department correctly include claimant's husband in her FAP group composition?

Did the Department correctly impose a deductible on claimant's Medicaid case?

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 a FAP and MA recipient in Oakland County.
- (2) Claimant's husband was a member of the FAP group.
- (3) Claimant's husband told DHS that he did not live with claimant.

- (4) Claimant's husband purports to act as a live in caretaker for the claimant, does all work in exchange for rent, and represents to society that he lives in a separate apartment.
- (5) The "apartment" in question is actually a room on the second floor of the house, but it is separated by a locking door, upon which the claimant's husband has hung a sign with an address plaque showing a separate apartment from that of the claimant.
- (6) This "apartment" does not pay separate utilities.
- (7) Claimant's husband maintains separate possessions and prepares food separately from claimant.
- (8) Claimant's husband has a separate bank account.
- (9) The Department found claimant and her husband to be part of the same group.
- (10) This finding reduced claimant's FAP grant and gave claimant a significant MA deductible.
- (11) Claimant filed for hearing on August 24, 2009, alleging that DHS incorrectly computed her budgets by including her husband in the FAP group.

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 Bridges Reference Manual (BRM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM) and Reference Tables (RFT).

Spouses who are legally married and live together must be in the same FAP group. BEM 212. For MA purposes, income must be considered from the claimant's spouse if the spouse lives with the claimant. BEM 211.

Therefore, for the purposes of the current case, a determination must be made as to whether claimant's husband lives with the claimant.

Claimant's husband was adamant at hearing that he did not live with the claimant. While he technically lives in the same building, claimant lives on the first floor, while her husband lives on the second floor. Claimant has not taken the last name of her spouse. Claimant's husband has separated his living area off from the rest of the household by use of a heavy-duty, locking door. Claimant's husband has attached a sign to the door that states that the upstairs of the house in question is a separate "apartment". Claimant's husband has mail delivered directly to this "apartment". Claimant's husband maintains a separate bank account and buys and prepares his own food, though he uses claimant's appliances to do so.

However, upon questioning, claimant's husband admitted that all utilities are contained in one bill which is paid by the claimant. Claimant's husband's driver's license still reflects the same address. Claimant's husband does not pay rent, though he does do all chores and takes care of his wife in place of rent. This presumably includes utilities. Claimant argued that the sum of

this situation is that claimant's husband is not living with her, and therefore should not be considered as part of the group in question.

The Administrative Law Judge has considered the issue, and must disagree.

Cervantes v. Farm Bureau, 726 NW 2nd 73 (2006) outlined a several prong test to determine if a person is not "living with" another person. These prongs include whether or not the person in question maintains a separate mailing address, maintains separate possessions at the house, has legal documents showing a separate address, maintains a separate bedroom, and relies on any financial support from the other person.

While the claimant in the current situation certainly meets some prongs of this test, the undersigned does not believe that the claimant meets all prongs of this test.

With regard to a separate mailing address, claimant's husband has told the post office that there are two addresses in the house he and the claimant occupy. He has represented this to the world by hanging a hand-lettered sign on the locking door to the second floor which alerts all comers to the fact that he considers this apartment as a separate mailing address. While the undersigned certainly finds claimant's husband's method unorthodox, he is unable to find a particular fault with what he has done and therefore believes that he meets this prong of our test.

The next prong of the test is whether the person in question maintains separate possessions in the home. Claimant's husband testifies that he maintains his own living space with his own possessions. The undersigned found claimant's husband generally credible, and sees no reason or evidence to dispute this claim. Therefore, he meets the second prong of the test.

Claimant must also be able to show that there are legal documents that show a different address than her own, in order to prove that her husband and she were not living together.

Unfortunately, no such documents exist. Legally speaking, all deeds and titles show the property

as one unit. There is no lease. Claimant's husband's driver's license and other forms of identification all show him living in the same house as his wife. In fact, the undersigned is not aware of any such legal documents that show claimant and her husband living in a separate residence. Therefore, claimant and her husband fail this prong of the test.

The fourth prong is whether claimant and her husband maintain a separate bedroom. Claimant's husband testified that he does, and the undersigned has no reason to doubt this. Therefore, he passes this prong of the test.

The final prong is whether the people claiming that they are not living together financially support each other. After much consideration, the undersigned is skeptical of the claims presented by claimant's husband.

While claimant's husband maintains a separate bank account, he does not pay rent, utilities, homeowner's insurance, or any other bill that would normally go into maintaining a separate residence. The undersigned considers this financial support. Claimant's husband testified that he does not pay rent or any other bills because he makes that up in services to his wife—by participating as her caretaker, doing chores around the house, and maintaining the residence.

The Administrative Law Judge finds this all well and good—but it does nothing to alleviate concerns as to whether the couple financially supports each other. The tasks the husband describes are no different than the regular chores done by somebody who lives in a residence. While it is commendable that claimant's husband acts as a live-in caretaker for the claimant, the undersigned cannot differentiate this from a normal husband taking care of his wife. In sum, the undersigned cannot find that the claimant and her husband don't financially support each other—he lives in the house rent and utility free. The “chore for services”

agreement claimant's husband attests to has no real affect on the situation—these chores would be done by the claimant's husband if he was in a normal relationship with his wife and are indistinguishable from normal home upkeep by any family group that lives under the same roof.

Therefore, claimant and her husband do not pass two prongs of the *Cervantes* test. As such, claimant and her husband cannot be said to reside in separate residences. As they do not reside in separate residences, both incomes must be used when calculating the FAP budget and the Medicaid budget. No errors were alleged in either budget other than claimant's husband's income should not have been used. As claimant and her husband are living together, both are mandatory group members, and both incomes should be used in all budget calculations. The Department was correct when it did so.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department was correct when it included both claimant and her husband in the same benefit group.

Accordingly, the Department's decision is, hereby, AFFIRMED.



Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 06/15/10

Date Mailed: 06/18/10

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 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

cc:

