

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: 2010-39788

Issue No: 3014

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

July 14, 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 telephone hearing was held on July 14, 2010. Claimant appeared and testified.

ISSUE

Did the Department of Human Services properly determine the members of Claimant's Food Assistance Program (FAP) benefit 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) On October 8, 2002, Claimant and his wife were divorced. The Judgment of Divorce stated that the parties have joint physical custody of their two minor children. The Judgment spelled out specific physical custody and parenting time, for both parties. Claimant's ex-wife

was to have the children alternate weeks during summer vacation and during the school year every other week from Friday evening till Wednesday evening.

(2) In June 2009, Claimant became an ongoing recipient of Food Assistance Program (FAP) benefits. The two minor children WERE NOT members of his benefit group.

(3) In August 2009, Claimant's ex-wife began receiving Food Assistance Program (FAP) benefits and has the two children in her benefit group.

(4) On January 26, 2010, Claimant was sent a Notice of Case Action (DHS-1605) stating his Food Assistance Program (FAP) benefits would be reduced because his net unearned income had changed.

(5) On February 8, 2010, Claimant submitted a request for hearing on the Notice of Case Action (DHS-1605) dated January 26, 2010. Claimant also began inquiries about getting the two children in his Food Assistance Program (FAP) benefit group.

(6) Investigation of the change revealed that the BRIDGES computer program was over budgeting Unemployment Compensation Benefits (UCB) for Claimant. The error was fixed and Claimant's Food Assistance Program (FAP) benefits went back up.

(7) On May 17, 2010, Claimant and his ex-wife agreed to modify the physical custody and parenting time agreement in their Judgment of Divorce.

(8) On June 16, 2010, the [REDACTED] local DHS office requested that the [REDACTED] local DHS office remove the two children from their mothers Food Assistance Program (FAP) benefit group.

(9) On June 17, 2010, the [REDACTED] local DHS office stated the children would not be removed from their mother's benefit group based on the new agreement and BEM 212.

(10) On June 22, 2010, the [REDACTED] local DHS office finally sent Claimant's request

for hearing and associated information to the State Office of Administrative Hearings and Rules.

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.

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.

Caretaker

A caretaker is a related or unrelated person who provides care or supervision to a child(ren) **under 18** who lives with the caretaker but who is **not** a natural, step or adopted child. This policy does **not** apply to foster children (see below). A person acting as a parent and the child(ren) for whom he acts as a parent who live with him **must** be in the same group.

LIVING WITH

Living with means sharing a home where family members usually sleep and share **any** common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share **only** an access area (e.g., entrance or hallway) or non-living area (e.g., laundry) are **not** considered living together.

See BEM 617 for policy regarding persons in other group living situations.

Temporary Absence

A person who is temporarily absent from the group is considered living with the group.

A person's absence is temporary if:

- His location is known; **and**
- He lived with the group before his absence (newborns are considered to have lived with the group); **and**
- There is a definite plan for his return; **and**
- The absence has lasted or is expected to last 30 days or less.

Exception: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home.

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). (BEM 212)

In this case the original Judgment of Divorce and physical custody agreement provides that the children would spend a majority of their time with Claimant. The sequence of events during which Claimant and his ex-wife applied for Food Assistance Program (FAP) benefits resulted in the ex-wife having the children included in her benefit group. The [REDACTED] local DHS office made efforts to have the children removed from their mother's benefit group and included in Claimant's. That effort was unsuccessful.

An Administrative Law Judge only has authority and jurisdiction to address specific, individual requests for hearing and determine if the Department of Human Services acted in accordance with law and policy to make changes to an individual's benefits. That authority does not extend to enforcement of a Judgment of Divorce or determining Department actions regarding a benefit recipient who is not part of a specific hearing.

Because no person can be in more than one Food Assistance Program (FAP) benefit group, the Department properly determined that Claimant's two children could not be added to his benefit group.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department of Human Services properly determined the members of Claimant's Food Assistance Program (FAP) benefit group,

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: July 23, 2010

Date Mailed: July 26, 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.

GFH/alc

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