

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201048602
Issue No: 3014
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 9, 2010
Oceana County DHS

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on August 13, 2010. After due notice, a telephone hearing was held on Thursday, September 9, 2010.

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's Food Assistance Program (FAP) eligibility?

FINDINGS OF FACT

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

1. The Claimant applied for FAP benefits for his son.
2. The Department refused to add the Claimant's son to his FAP group because the son receives FAP benefit as apart of another active FAP case.
3. The Claimant is responsible for his son's care and supervision for 84 hours each week.
4. The Department received the Claimant's request for a hearing on August 13, 2010, protesting the Department's determination that he is an absent caretaker.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (formerly known as the Food Stamp 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), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons resides in an eligible living situation. BEM 212. 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 for more than half of the days in a calendar month, on average, in a twelve-month period. BEM 212. When a child spends time with multiple caretakers who do not live together, only one person can be the primary caretaker and the other caretaker is considered the absent caretaker. BEM 212.

The Claimant applied for FAP benefits, including his son as a group member. The Department refused to include the Claimant's son in his FAP group because he was already receiving benefits on an active FAP case. The Department determined that the Claimant is an absent caretaker, and the Claimant's former spouse, who is an ongoing FAP recipient, is the child's primary caretaker.

The Claimant argued that he has custody of his son more than his former spouse. The Claimant testified that on January 4, 2010, the 27th Judicial Circuit Court of Oceana County issued an order that awards parental time of 183 overnights for himself, and 182 overnights for his former spouse.

This court order was modified by agreement on February 1, 2010, giving the Claimant custody of his son on Friday mornings at 8:00 a.m. to Monday nights at 8:00 p.m., with his former spouse taking custody of his son for the remainder of the week. The terms of this agreement give the Claimant and his spouse and equal amount of parenting time each week.

The Department's policy does not consider that the Claimant had a right to 84 hours of parenting time each week. Under Bridges Eligibility Manual Item 212, the primary caretaker is the person responsible for the child where the child sleeps for more than half of the days in a calendar month. In this case, the agreement between the Claimant and his former spouse grants parenting time to him for three nights a week, and to his former spouse for four nights a week.

The Claimant argued that the Department should consider him the primary caretaker because he is responsible for his son for a greater period when his son is likely to eat his meals. The Claimant argued that declaring him the primary caretaker would be an equitable remedy that best provides for the needs of his son.

However, the claimant's grievance centers on dissatisfaction with the department's current policy. The claimant's request is not within the scope of authority delegated to this Administrative Law Judge. Administrative Law Judges have no authority to make decisions on constitutional grounds, overrule statutes, overrule promulgated regulations, or make exceptions to the department policy set out in the program manuals. Furthermore, administrative adjudication is an exercise of executive power rather than judicial power, and restricts the granting of equitable remedies. *Michigan Mutual Liability Co. v Baker*, 295 Mich 237; 294 NW 168 (1940).

The Claimant testified that the agreement with his former spouse declares that any benefits received from the Department of Human Services will be divided equally between him and his former spouse for the benefit of their son.

However, this Administrative Law Judge has no jurisdiction to settle disputes over circuit court orders or agreements modifying these orders.

Based on the evidence and testimony available during the administrative hearing, I find that the Department established that it acted in accordance with policy when it determined that the Claimant is an absent caretaker of his son for the purposes of determining FAP eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department acted in accordance with policy in determining the Claimant's FAP eligibility.

The Department's FAP eligibility determination is AFFIRMED. It is SO ORDERED.

/s/ _____
Kevin Scully
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 16, 2010

Date Mailed: September 16, 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.

KS/vc

cc:

