

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

IN THE MATTER OF:

[REDACTED]

Reg. No:

Issue No:

[REDACTED]

ADMINISTRATIVE LAW JUDGE:

[REDACTED]

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Claimant's request for hearing. After due notice, a telephone conference hearing was held on [REDACTED]. The Claimant was present and testified.

ISSUE

1. Did the Department properly determine Claimant's Food Assistance Program (FAP) group?

FINDINGS OF FACT

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

1. The Claimant was receiving FAP assistance with her minor son, [REDACTED] included as a member of her household. (Department Exhibit 1, pgs 9-13).
2. The Claimant was under a program sanction beginning in [REDACTED] for her failure to comply with the Work First Program as part of her cash assistance. (Department Exhibit 1 pg 3).
3. On [REDACTED], 17th Circuit [REDACTED] entered an order granting [REDACTED] father, with primary physical custody of [REDACTED] (Respondent Exhibit A, pgs 1-3).
4. [REDACTED] was placed on his father's FAP case beginning in [REDACTED]. (Department Exhibit 1 pg 7).
5. The Department redetermined the Claimant's FAP after removing her minor child from the group. (Department Exhibit 1 pgs 9-13).

6. The Claimant was the only member of the household beginning in [REDACTED] with the change of custody. She was not eligible for FAP because of the sanction imposed in [REDACTED]. (Department Exhibit 1 pg 3).
7. On [REDACTED], the Department sent the Claimant notice that her monthly FAP allotment was closed beginning [REDACTED] as there was no eligible member in her household. (Department Exhibit 1 pgs 1-2).
8. On [REDACTED], the Department received the Claimant's Request for Hearing, [REDACTED] protesting the Department's determination of her FAP allotment.

CONCLUSIONS OF LAW

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901 - .951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1) An opportunity for a hearing shall be granted to an applicant who requests a hearing because of a denial. MAC R 400.903(2)

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness. BAM 600.

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), Reference Table Manual (RFT), State Emergency Relief Manual (ERM) and the Bridges Reference Manual (BRM). Department policy states:

BEM 212 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). (BEM 210)

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.

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.

Changes in Primary Caretaker

Re-evaluate primary caretaker status when:

- A new or revised court order changing custody or visitation is provided.
- There is a change in the number of days the child sleeps in another caretaker's home and the change is expected to continue, on average, for the next twelve months.
- A second caretaker disputes the first caretaker's claim that the child (ren) sleeps in his/her home more than half the nights in a month, when averaged over the next 12 months.
- A second caretaker applies for assistance for the same child.

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.

BAM 220 EFFECTIVE DATE OF CHANGE

Bridges evaluates the following dates entered in data collection to determine positive action dates, negative action dates and effective dates:

- Circumstance start/change date.
- Reported on.
- Verification received on.
- Date client became aware.

FAP Only

For non-income changes, complete the FAP eligibility determination and required case actions in time to affect the benefit month that occurs ten days after the change is reported. See BEM 212 and 550 for policy regarding effective dates for member adds. The benefit month **cannot** be earlier than the month of the change.

Prior to determining financial eligibility for FAP, the Department is required to determine the group composition pursuant to BEM 212. For minor children that reside with their parents, they are part of their parents group. In this case, the Department has 1 minor child with 2 parents requesting assistance.

Department policy provides that the Department is required to determine the primary caretaker. BEM 212 defines the primary caretaker as the individual 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. In this case, both the Claimant and the child's father claim to be the primary caretaker. Because the primary caretaker status is disputed, the Department is required by policy to base the determination on the evidence provided by the caretakers. BEM 212.

Department policy states that the most recent court order that addresses custody and /or visitation is a proper verification to determine primary caretaker. In this case, the most recent court order addressing custody and / or visitation is the court order entered on [REDACTED]. In that order, [REDACTED] awarded primary physical custody to the father. As a result of the court order, the Department determined that the father was the primary caretaker of the minor child. [REDACTED] was then placed in the father's group composition. Although the Claimant states that Isaiah lives primarily with her, this claim is contradicted by the [REDACTED] order. The Department properly determined that the father is the primary caretaker based on the [REDACTED] order.

The Department is required to redetermine the Claimant's eligibility whenever there is a reported change of circumstances. BEM 220. In this case, the Claimant's group composition changed when Isaiah's father became his primary caretaker. As a result the Department redetermined if the Claimant was eligible for FAP. At the time of the redetermination, the Claimant was the only member of her household. The Claimant was not eligible for FAP benefits at that time because of a sanction for non-compliance that was imposed beginning in [REDACTED]. As a result of no eligible group members, the Claimant's FAP benefit was closed beginning in [REDACTED].

The Claimant states that her benefit was terminated in [REDACTED]. This is not found credible as the evidence indicates that the Claimant's group size was 1 and she was receiving FAP benefits in the amount of [REDACTED] when her case closed. (Department exhibit 1 pg 13).

The Department properly determined that Isaiah's father was his primary caretaker. As a result, Isaiah was moved from the Claimant's FAP group composition. The Claimant is not currently eligible to receive a FAP benefit as she is under a sanction for non-compliance.

DECISION AND ORDER

This Administrative Law Judge, based upon the above findings and conclusion of law, decides that the Department correctly determined the Claimant's FAP group and that the FAP benefit was correctly determined.

It is so ORDERED.

_____/s/ [REDACTED]

Date Signed: 3/24/11

Date Mailed: 3/24/11

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.

[REDACTED]