

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 20112384
Issue No: 3014
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 16, 2010
Washtenaw County DHS

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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 16, 2010. Claimant appeared and provided testimony.

ISSUE

Did the department properly reduce Claimant's Food Assistance Program (FAP) benefits on the basis that her daughter was no longer a member of her household?

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 August 12, 2010, Claimant's daughter, P.M., filed an Assistance Application (DHS 1171) and a Homeless Statement requesting Food Assistance Program (FAP) benefits. (Department Exhibits 1 and 2).
2. When P.M.'s Assistance Application was processed, it was determined that P.M. was in Claimant's group which resulted in a decrease of FAP benefits to Claimant when P.M. was removed from Claimant's group. (ALJ Exhibit 1).
3. Claimant was mailed a Notice of Case Action (DHS 1605) on August 12, 2010. (ALJ Exhibit 2).

4. Order Appointing Co-Guardianship for Individual with a Developmental Disability dated September 21, 2010, appointing Claimant as [REDACTED]'s co-guardian. The order states in pertinent part that [REDACTED] is partially without capacity to make program and residential placement decisions. (Department's Exhibit 4).
5. Claimant submitted a hearing request on September 29, 2010.

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

Department policy indicates:

FOOD ASSISTANCE PROGRAM GROUP COMPOSITION

DEPARTMENT POLICY

You must determine who is included in the Food Assistance Program (FAP) group prior to evaluating the nonfinancial and financial eligibility of everyone in the group.

To establish FAP group composition determine:

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" in this item.)

BEM, Item 212, p. 1.

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. BEM, Item 212, p. 1.

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. BEM, Item 212, p 2.

Discrepancies

Before determining eligibility, give the client a reasonable opportunity to resolve any discrepancy between his statements and the information from another source. BAM, Item 130, p 6.

In this case, Claimant is disputing the department's action in removing her daughter, P.M., from the program group. Claimant credibly testified that [REDACTED] is developmentally disabled and she submitted an Order Appointing Co-Guardianship for Individual with a Developmental Disability from the Washtenaw County Probate Court dated September 21, 2010. The order states in pertinent part that [REDACTED] is partially without capacity to make program and residential placement decisions. The claimant testified during the hearing that P.M. was still living with her but was staying overnight off and on with her thirty year old boyfriend.

On August 12, 2010, P.M. applied for the Food Assistance Program (FAP) and submitted a Homeless Statement. A negative action was generated due to the removal of P.M. from Claimant's group composition, decreasing Claimant's FAP benefits.

On review of the Guardianship papers from the Washtenaw County Probate Court, this Administrative Law Judge finds there is no evidence that [REDACTED] has the legal right to apply for public assistance benefits or services on her own. The department also failed

to establish that at all times relevant to this matter, [REDACTED] was not residing with Claimant or that her absence(s) was anything but temporary. Lastly, the department failed to give Claimant a reasonable opportunity to resolve the discrepancy between [REDACTED] statements and her own.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department failed to establish that it properly reduced Claimant's FAP benefits on the basis her daughter is no longer living in her home.

Accordingly, the department's actions are REVERSED. The department shall allow Claimant the opportunity to resolve the discrepancy concerning her daughter's living arrangement in accordance with the applicable policy and redetermine Claimant's eligibility for FAP benefits. In addition, the department shall issue any FAP supplement that Claimant is otherwise eligible to receive.

SO ORDERED.

/s/

Vicki L. Armstrong
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 1, 2010

Date Mailed: December 2, 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.

VLA [REDACTED]

cc: [REDACTED]