

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 201142056
Issue No: 3008, 3014, 2006
Case No: [REDACTED]
Hearing Date: August 10, 2011
Barry County DHS

ADMINISTRATIVE LAW JUDGE: Christopher S. Saunders

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 August 10, 2011. The claimant personally appeared and provided testimony. The claimant appeared with her appointed representative, [REDACTED]

ISSUES

1. Did the department properly determine that the claimant's husband needed to be included in the group for the purpose of determining eligibility for and computation of the claimant's Food Assistance Program (FAP) and Medical Assistance Program (MA) benefits?
2. Did the department properly close the claimant's Food Assistance Program (FAP) and Medical Assistance (MA) cases for failure to return the required verifications?

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 was a recipient of FAP and MA benefits.
2. On May 19, 2011 the claimant contacted the department to report that she and her family had moved in with her estranged husband and were currently living in his home. (Department Exhibit 1).
3. The claimant reported that she and her husband were separated but not divorced and that her husband was currently employed. (Department Exhibit 1).

4. The claimant was sent a Verification Checklist (DHS 3503), requesting verification of her husband's income and expenses with a due date of May 31, 2011. (Department Exhibits 12-14).
5. The claimant failed to submit the verification forms to the department by their due date of May 31, 2011.
6. The claimant was sent a Notice of Case Action (DHS 1065) on June 3, 2011 informing her that her FAP and MA cases were being closed due to her failure to submit the required verifications. (Department Exhibits 15-20).
7. The claimant submitted a hearing request on July 8, 2011.

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 400.901-400.951. 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).

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

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 Program Reference Manual (PRM).

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).

Claimants are required to comply with the local office to allow the department to determine initial or ongoing eligibility. BAM 105. The department informs the client what verification is required, how to obtain it, and the due date by using the Verification Checklist form (DHS-3503). BAM 130. Clients are provided ten days to return the verifications, but can request an extension of time to provide the verifications. BAM

130. If the time period to provide the verifications elapses and the verifications have not been provided, the department is directed to send a negative action notice. BAM 130.

Department policy states as follows:

Verifications

All Programs

Clients must take actions within their ability to obtain verifications. DHS staff must assist when necessary. See BAM 130 and BEM 702. BAM 105.

Assisting the Client

All Programs

The local office must assist clients who ask for help in completing forms (including the DCH-0733-D) or gathering verifications. Particular sensitivity must be shown to clients who are illiterate, disabled or not fluent in English. BAM 105. Verification is usually required at application/redetermination and for a reported change affecting eligibility or benefit level. BAM 130.

Obtaining Verification

All Programs

Tell the client what verification is required, how to obtain it, and the due date (see "Timeliness Standards" in this item). Use the DHS-3503, Verification Checklist, or for MA redeterminations, the DHS-1175, MA Determination Notice, to request verification. BAM 130.

The client must obtain required verification, but you must assist if they need and request help.

If neither the client nor you can obtain verification despite a reasonable effort, use the best available information. If no evidence is available, use your best judgment. BAM 130.

Timeliness Standards

FIP, SDA, CDC, FAP

Allow the client 10 calendar days (or other time limit specified in policy) to provide the verification you request. BAM 130.

Exception: For CDC only, if the client cannot provide the verification despite a reasonable effort, extend the time limit at least once.

Verifications are considered to be timely if received by the date they are due. For electronically transmitted verifications (fax, email), the date of the transmission is the receipt date. Verifications that are submitted after the close of business hours through the drop box or by delivery of a DHS representative are considered to be received the next business day.

Send a negative action notice when:

- . the client indicates refusal to provide a verification, or
- . the time period given has elapsed and the client has not made a reasonable effort to provide it. BAM 130.

For purposes of establishing group composition and eligibility for MA benefits, department policy provides that only persons living with one another can be in the same group. BEM 211. To “live with” means to share a home where family members usually sleep. BEM 211.

For purposes of establishing group composition and eligibility for FAP benefits, department policy states as follows:

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.

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. BEM 212.

The case at hand rests on the determination as to who must be considered part of the claimant's group for FAP and MA purposes. The claimant testified that her boyfriend, her children, and she are currently living with her estranged husband. The claimant and her husband are still legally married, but they have been separated for some time now. The question presented is whether or not the claimant's husband must be included in the group composition.

As of the date of the hearing the claimant, her boyfriend, and her children are paying monthly rent and in turn living with her estranged husband. She testified that her husband owns the home they are staying at and that she and her boyfriend and children mostly stay in the basement, where their rooms are. She further testified that the home only contains one kitchen and that the home has two living areas; one upstairs and one in the basement.

It should be noted that prior to the close of the hearing record, the claimant's appointed representative requested that he be allowed to view the documentation provided by the department and submit a supplemental brief on behalf of the claimant. The claimant's representative was not provided with copies of the exhibits or the hearing summary prior to the hearing. This Administrative Law Judge granted the claimant's representative's request and received the brief shortly after the hearing.

██████████, the claimant's representative, argues in his brief that the claimant was not given the opportunity at the hearing to address the issue of whether or not the claimant and her husband purchase food and prepare meals together. Taking this argument into consideration, the Administrative Law Judge will assume (for purposes of this decision) that the claimant and her husband *do not* purchase food and prepare meals together, as asserted by ██████████ in his brief.

██████████ argues that in determining the claimant's group composition for MA purposes, the claimant's husband does not need to be included in the group because the claimant has no rights of equity in the home and she does not share in the cost or maintenance of the home. BEM 211 states that only persons living together can be in the same group and that living together means sharing a home where family members usually sleep. There is no requirement for any equitable interest, nor that any cost of the home

be shared in order to be in the same group. Furthermore, the claimant provided testimony that she pays rent to her husband on a monthly basis and therefore it cannot be said that she is not contributing to the household. Regardless of the claimant's financial contribution, the fact that she and her husband are living in the same home where they sleep means that they are to be included in the same group.

Concerning the claimant's FAP group composition, [REDACTED] again argues that the claimant's husband should not be included in the group. [REDACTED] argues that the wording of BEM 212 suggests that all factors mentioned in the first paragraph on page one of the policy must be considered on an individual basis to determine group composition.

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). BEM212.

[REDACTED] argues that because of the word "and", all four factors mentioned in this section of the policy must be considered separately and distinctly in order to determine the group composition. However, in *Macomb County Prosecuting Attorney v Murphy*, 464 Mich 149, 159; 627 NW2d 247 (2001), the Supreme Court of Michigan stated that statutory provisions must be read in the context of the entire statute so as to produce a harmonious whole. Considering this ruling, the policy must be read as a whole, including the next four lines of policy immediately following the above section cited by Mr. Smith:

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 who are legally married and live together must be in the same group. BEM 212.

In reading the policy as a whole, it is clear from the above-cited provision that spouses who live together *must* be in the same group regardless of whether food is purchased and prepared separately or together. The question of whether or not the claimant and her husband purchase and prepare food together is therefore moot, as it is their *legal status* as husband and wife that controls for the purpose of group composition. Additionally, in relation to whether or not spouses are considered living together, department policy states:

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. BEM 212.

At the hearing, the claimant provided testimony that her husband's home contains only one kitchen. Therefore, all members of the home must use the same kitchen, which is specifically listed in policy as a common living area, the sharing of which is used for purposes of determining group composition. Based on the stated living situation of the claimant and her husband, the claimant's husband must be included in the group for the purposes of determining FAP eligibility and benefits.

Because the claimant's husband must be included in the group for purposes of determining FAP eligibility and benefit allotment, the claimant's husband was therefore required to provide verifications to the department regarding income. There has been no assertion that the claimant's husband submitted said verifications, and no testimony given that would contradict the department's claim that the requested verifications were not received. Therefore, because the requested income verifications were not submitted to the department, the department properly closed the claimant's FAP and MA cases in accordance with policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly closed the claimant's FAP and MA cases for failure to provide the required verifications.

Accordingly, the department's actions are **AFFIRMED**. SO ORDERED.

/s/

Christopher S. Saunders
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: August 29, 2011

Date Mailed: August 30, 2011

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

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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.

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