

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.: 201111744
Issue No.: 3015
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date: January 24, 2011
Macomb County DHS

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was held on January 24, 2011. The Claimant appeared and testified.

[REDACTED], ES and [REDACTED] appeared on behalf of the Department.

ISSUE

Was the Department correct in denying Claimant's FAP application due to excess income?

FINDINGS OF FACT

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

- (1) Claimant applied for FAP benefits on December 2, 2010.
- (2) Claimant application was denied on December 7, 2010 due to excess income.
- (3) Claimant receives \$746 per week in unemployment compensation.

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- (4) Claimant's children are in his care less than 50% of the time.
- (5) Claimant requested a hearing on December 13, 2010 contesting the denial of FAP benefits.

CONCLUSIONS OF LAW

The Food Assistance Program, 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"), formerly known as the Family Independence Agency, administers the FAP program pursuant to MCL 400.10, *et seq* and MAC R 400.3001-3015. Departmental policies are found in the Bridges Administrative Manual ("BAM"), the Bridges Eligibility Manual ("BEM"), and the Program Reference Manual ("PRM").

Department policy delineates who to define primary caretaker: 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:

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- 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.

The federal regulations define household income to include all earned income. 7 CFR 273.9(b). All monthly income must be converted to a nonfluctuating monthly amount. Only 80% of earned income is counted in determining FAP benefits. BEM 550. Under 7 CFR 273.9, as amended, \$132.00 is deducted from the gross income of FAP recipients in determining FAP grants.

In the present case, according to the aforementioned policy on budgeting, Claimant has \$3207 unearned income from worker's compensation benefits. The net income limit for

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a household of 2 is \$2430. Claimant's net income exceeds this limit. Therefore the Department's denial of FAP benefits is proper and correct.

Claimant testified that he has liberal parenting time with his two children. Claimant testified that his parenting time order states every other weekend parenting time and that his children do not spend 50% or more overnights with him. Claimant's children cannot be included in his household because pursuant to Department policy he is not the primary caretaker. BEM 212.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the Department properly denied the Claimant's FAP application, and it is ORDERED that the Department's decision in this regard be and is hereby AFFIRMED.



Aaron McClintic
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: February 4, 2011

Date Mailed: February 4, 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 of the rehearing decision.

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