

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201119265

Issue No:



Case No:

Hearing Date:

March 17, 2011

Eaton 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 received on February 9, 2011. After due notice, a telephone hearing was held on March 17, 2011. Claimant personally appeared and provided testimony.

ISSUE

Whether the department properly determined that Claimant's step-son was not eligible to be included as a group member and recipient of Claimant's Food Assistance Program (FAP) benefits?

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 January 4, 2011, Claimant applied for FAP benefits and included her step-son. Claimant's step-son was currently active on his mother's case in Calhoun County. (Hearing Summary).
2. On February 10, 2011, the department mailed Claimant a Notice of Case Action (DHS 1605), advising her that her step-son was not a member of the eligible group approved to receive FAP benefits. (Department Exhibits 4-7).
3. On February 9, 2011, Claimant requested a hearing protesting the department's refusal to include her step-son as an eligible group member. (Hearing Request).

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 affective eligibility for 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 of that decision. 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) and the Bridges Reference Manual (BRM).

For purposes of establishing group composition and eligibility for FAP, department policy provides that children in a joint custody arrangement are considered to be living with only one parent, who is designated the primary caretaker. BEM 212, BEM 210, BEM 110. The primary caretaker is the parent who provides the home where the child sleeps more than half of the days in a month, when averaged over a twelve month period. BEM 212, BEM 210, BEM 110. The twelve month period begins when a primary caretaker determination is made. BEM 212, BEM 210, BEM 110. The department makes this determination by following these steps:

- The client is asked how many days the child sleeps at his/her home in a calendar month.
- The client's statement is accepted unless questionable or disputed by another caretaker – in which case, verification is needed and may include, but not be limited to:
 - the most recent court order addressing custody and/or visitation;
 - school records indicating who enrolled the child in school, who is to be contacted in case of emergency, and/or who arranges for the 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; and
 - medical providers' records showing where the child lives and who generally takes the child to medical appointments.
- The department's determination should be based on the evidence provided by both caretakers in support of his/her claim. BEM 212.

Department policy further provides that 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 is considered the absent caretaker. BEM 212.

In this case, Claimant's husband testified that he shares joint custody of his son with his ex-wife, but his son lives with him 9 months of the year and that he drives his son to and from school. Claimant's step-son was present and sworn in. He is 15 years old.

Claimant's step-son credibly testified that he lives with his father and his father drives him to and from school. He also stated that his father is his emergency contact for his school. When asked, Claimant's son testified that he sees his mother once or twice a month on weekends, depending if his mother has time.

Based on Claimant's step-son's testimony, it is clear that Claimant's husband is the primary caretaker, not his wife. To be sure, during the school year (about 40 weeks), Claimant's husband has his son five days/nights each week, which results in 200 overnights. When averaged over a twelve month period, there can be no dispute that Claimant's husband is the parent who provides the home where his son sleeps more than half of the days in a month.

For these reasons, the department improperly determined that Claimant's husband was not the primary caretaker for purposes of establishing the inclusion and eligibility of his son in Claimant's FAP group. The Administrative Law Judge finds that, based on the credible testimony of Claimant's step-son during the hearing, the department improperly excluded Claimant's step-son from her group eligibility.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly excluded Claimant's step-son from her FAP group.

The department's actions are REVERSED and the department shall remove Claimant's step-son from his mother's FAP case and include him as a member of Claimant's FAP case.

It is SO ORDERED.

/s/ _____
Vicki L. Armstrong
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: March 24, 2011

Date Mailed: March 24, 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 reconsideration on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

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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]