

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: 2011654  
Issue No: 3002, 3014  
Case No: [REDACTED]  
Load No: [REDACTED]  
Hearing Date:  
October 27, 2010  
Muskegon County DHS

**ADMINISTRATIVE LAW JUDGE:** Kevin Scully

**HEARING DECISION**

This matter is before the undersigned Administrative Law Judge by authority of MCL 400.9 and MCL 400.37. Claimant's request for a hearing was received on September 20, 2010. After due notice, a telephone hearing was held on Wednesday, October 27, 2010.

**ISSUE**

Whether the Department of Human Services (Department) properly determined the Claimant's Food Assistance Program (FAP) eligibility?

**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 applied for FAP benefits as a group of four on September 13, 2010.
2. The Claimant has three children that are active on another FAP case.
3. The Claimant has custody of her children for half of the days in each month over a twelve month period.
4. The Claimant receives monthly earned income in the gross monthly amount of \$ [REDACTED]

5. The Department determined that the Claimant was not eligible for FAP benefits as a group of one due to excess income.
6. The Department received the Claimant's request for a hearing on September 20, 2010, protesting the denial of her FAP application.

### **CONCLUSIONS OF LAW**

The Food Assistance Program (FAP) (formerly known as the Food Stamp 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), and the Bridges Reference Manual (BRM).

For FAP purposes, all earned and unearned income available to the Claimant is countable. Earned income means income received from another person or organization or from self-employment for duties for duties that were performed for compensation or profit. Unearned income means all income that is not earned, including but not limited to funds received from the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA), Social Security Benefits (RSDI/SSI), Veterans Administration (VA), Unemployment Compensation Benefits (UCB), Adult Medical Program (AMA), alimony, and child support payments. The amount counted may be more than the client actually receives because the gross amount is used prior to any deductions. BEM 500.

The Department determines a client's eligibility for program benefits based on the client's actual income and/or prospective income. Actual income is income that was already received. Prospective income is income not yet received but expected. Prospective budgeting is the best estimate of the client's future income. BEM 505.

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons reside in an eligible living situation. BEM 212.

When a child spends time with multiple caretakers who do not live together (e.g., joint physical custody, parent/grandparent, etc.), the Department will determine a primary caretaker. Only one person can be the primary caretaker and the other caretaker is considered the absent caretaker. The child is always in the FAP group of the primary caretaker. 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, the Claimant receives monthly earned income in the gross monthly amount of \$ [REDACTED]. The Claimant did not dispute this income amount. The Claimant applied for FAP benefits as a group of four, but the Department considered her eligibility as a group of one because the Claimant's three children are active on another FAP group. The monthly gross income limit for a group of one is \$ [REDACTED] RFT 250. Therefore, as a group of one, the Claimant is not eligible to receive FAP benefits due to excess income.

The Claimant argued that she should be considered for FAP benefits as a group of four because she is a single mother of three children, and her need for FAP benefits is great.

The Department must make a determination of a child's primary caretaker when caretaker status is disputed or questioned. The Claimant has been awarded joint custody of her three children and the Claimant's children are members of another FAP group. The Claimant has custody of her three children for seven nights during each two week period. Since the Claimant's children spend half of the days in each month with her, and the other half with the Claimant's former spouse, the primary caretaker of the children is the person that was first approved for FAP benefits. Since the children have been members of an active FAP case, the Department considers them to be living with their primary caretaker while under the care of their father. As a group of one, the Department denied the Claimant's FAP application due to excess income.

Since the Claimant's children cannot be part of her FAP group, the Department must consider her eligibility for FAP benefits as a group of one. The Department has established that the Claimant is not eligible for FAP benefits as a group of one due to excess income.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department acted in accordance with policy in determining the Claimant's FAP eligibility.

The Department's FAP eligibility determination is AFFIRMED. It is SO ORDERED.

\_\_\_\_\_/s/

Kevin

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Scully  
Administrative Law Judge  
for Duane Berger, Director  
Department of Human Services

Date Signed: January 6, 2011

Date Mailed: January 6, 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.

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.

KS/alc

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