

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

**IN THE MATTER OF:**



Reg. No: 20138790  
Issue No: 3014  
Case No: [REDACTED]  
Hearing Date: January 2, 2013  
Macomb 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on January 2, 2013. The claimant personally appeared and provided testimony. The claimant was represented by [REDACTED], an attorney. The department was represented by assistant attorney general, Ms. Fennessey.

**ISSUE**

Whether the department properly included the claimant's wife in his group composition for the purpose of determining his eligibility for 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. The claimant has been a recipient of FAP benefits at all times pertinent to this hearing.
2. On May 14, 2012, an agent from the office of inspector general (OIG) conducted a home visit at the claimant's residence to determine who was living at the claimant's residence. (Department Exhibit 2).
3. As a result of that visit, the OIG agent determined that the claimant, the mother of his children, and his two children are residing in the same home. (Department Exhibit 2).
4. The department therefore included the income of the mother of the claimant's children in his FAP budget. (Department Exhibit 7).

5. Based on the budget which included the income of the mother of the claimant's children, the department determined that the claimant exceeded the allowable income limit to receive FAP benefits. (Department Exhibit 7).
6. On October 24, 2012, the department sent the claimant a notice of case action (DHS 1605) stating that his FAP benefits would be closing effective December 1, 2012. (Department Exhibit B).
7. On October 29, 2012, the claimant filed a request for hearing, protesting the closure of his FAP case.

### **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 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 FAP purposes, all earned and unearned income available to Claimant is countable. Earned income means income received from another person or organization or from self-employment 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 (AMP), 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.

In order to determine which individual's income must be included in determining FAP eligibility, the department must determine the composition of the claimant's FAP group. Policy states that parents and their children under 22 years old who live together must be included in the same group regardless of marital status. BEM 212. Therefore, if the

parents of a child who is under 22 years of age live together, they must be included in the same FAP group. Policy defines living together as follows:

### **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 such as an entrance or hallway or non-living area such as a laundry room are **not** considered living together. BEM 212, page 2, November 1, 2012.

In this case, the department conducted an investigation through the OIG and determined that the claimant and the mother of his children were in fact living in the same residence. The claimant contends that he and the mother of his children live at the same building; but that the dwelling is divided into two "suites" and that they live separately. The claimant testified that they have separate sleeping, eating, and living areas and that the two suites are entered from separate entrances. As proof, the claimant submitted a residential lease agreement between himself and his son (see Claimant Exhibit A), evidencing as asserted by the claimant that he is renting one of the suites. Additionally, the claimant submitted a photograph of two mailboxes which shows an "A" and a "B" and circulars which are addressed to the address of the claimant but to both suites A and B (see Claimant Exhibits B & C).

At the hearing, the claimant testified that there is only one utility bill for the dwelling; that there are not two separate bills for the suites. Additionally, the claimant testified that when he first reported his address at the dwelling in question to the department, that he did not report that he lived in a suite A or B; that he only reported the address of the dwelling itself. Furthermore, the public record data provided by the department shows nothing stating that there are two suites located at the dwelling (see Department Exhibit 6).

This Administrative Law Judge does not find the claimant's testimony as to living in a different suite than the mother of his children credible. The evidence presented tends to support the conclusion reached by the OIG (see Department Exhibit 2) as to the living situation between the claimant and the mother of his children; that being specifically that they are living together as defined by policy. As the Administrative Law Judge finds that the evidence supports the department's position that the claimant and the mother of his children are living together, the department therefore properly included the two of them together in the FAP group and, in turn, properly included the income of the mother of the claimant's children when determining FAP eligibility.

### **DECISION AND ORDER**

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined the claimant's FAP group

composition and therefore properly determined that the claimant was over the allowable income limit for FAP benefits. The department then properly closed the claimant's case for FAP benefits.

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

/s/

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

Date Signed: January 14, 2013

Date Mailed: January 15, 2013

**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.

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