

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.: 201344004
Issue No.: 2000, 3014
Case No.: [REDACTED]
Hearing Date: May 30, 2013
County: Kent

ADMINISTRATIVE LAW JUDGE: Gary F. Heisler

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 hearing was held on May 30, 2013. Claimant and [REDACTED] appeared and testified. The Department was represented by [REDACTED], [REDACTED], OIG RA [REDACTED] and OIG RA [REDACTED]. Review of Claimant's request for hearing shows there was no request for a hearing regarding Medical Assistance (MA). This file was incorrectly marked as having a Medical Assistance (MA) hearing issue.

ISSUE

Did the Department of Human Services properly close Claimant's Food Assistance Program (FAP) case 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 was an ongoing recipient of Food Assistance Program (FAP) benefits. The Department's records showed that Claimant's benefit group consisted of Claimant, [REDACTED] and [REDACTED]
- (2) On April 12, 2013, RA [REDACTED] sent an Email to ES [REDACTED] recommending that [REDACTED] be added to Claimant's benefit group.
- (3) On April 15, 2013, ES [REDACTED] pulled income information for [REDACTED] off Equifax. [REDACTED] and his income were added to Claimant's Food Assistance Program (FAP) benefit group. Claimant was sent a Notice of Case Action

(DHS-1605) which stated her Food Assistance Program (FAP) would close on May 1, 2013 due to excess income.

(4) On April 24, 2013, Claimant submitted a timely request for hearing.

CONCLUSIONS OF LAW

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).

Claimant disputes this Departmental action based on her assertion that [REDACTED] does not reside with her. Written evidence presented by the Department on this issue include: Emails from RA [REDACTED] (Pages 6-8); A [REDACTED] Police Department Incident Report dated [REDACTED] (Pages 37 & 38); and a July 30, 2012 OIG Investigation Report done by RA [REDACTED] regarding Claimant's residence at [REDACTED] in [REDACTED]. RAs [REDACTED] and [REDACTED] also provided testimony and answered questions regarding their home visit to Claimant's residence on April 12, 2013.

Admission of evidence during an Administrative Law Hearing on Department of Human Services' matters is not strictly governed by the Michigan Rules of Evidence. In accordance with the Michigan Administrative Procedures Act, an Administrative Law Judge may admit and give probative effect to any evidence. However, the final decision and order must be supported by and in accordance with competent, material, and substantial evidence.

Black's Law Dictionary defines competent evidence as: "That which the very nature of the thing to be proven requires, as, the production of a writing where its contents are the subject of inquiry. Also generally, admissible or relevant, as the opposite of incompetent."

Black's Law Dictionary defines incompetent evidence as: "Evidence which is not admissible under the established rules of evidence; evidence which the law does not permit to be presented at all, or in relation to the particular matter, on account of lack of originality or of some defect in the witness, the document, or the nature of the evidence itself. The Michigan Rules of Evidence include:

Rule 102 Purpose

These rules are intended to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and

development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 601 Witnesses; General Rule of Competency

Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

Rule 602 Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 801 Hearsay; Definitions

The following definitions apply under this article:

(a) *Statement.* A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant.* A "declarant" is a person who makes a statement.

(c) *Hearsay.* "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Rule 802 Hearsay Rule

Hearsay is not admissible except as provided by these rules.

Review of the evidence presented by the Department leaves the impression that the hearsay statements of ██████████'s grandparents were the primary basis for the conclusion that ██████████ resided with Claimant. In this case, the only competent evidence presented by the Department was the testimony of RA ██████████ and ██████████ regarding their April 12, 2013 home visit to Claimant's residence. It is undisputed that during the home visit Claimant was not present but ██████████ was present at the residence with the children. It is not disputed that the RAs entered the residence and did a short walk through of the premises. Neither is it disputed that ██████████ sleeps at Claimant's residence on a regular basis. Both Claimant and ██████████ dispute the Department's conclusion about the frequency of how often ██████████ sleeps at the residence.

This Administrative Law Judge questioned RAs [REDACTED] and [REDACTED] about what, if anything, they saw inside the residence that indicated [REDACTED] resided there. RA [REDACTED] stated he saw a "number of" [REDACTED]'s "personal items" in the residence. RA [REDACTED] was asked to specify what "personal items", but did not do so.

Both the local office representatives and the RAs were asked what, if any, Department policy they used as the basis for adding [REDACTED] to Claimant's Food Assistance Program (FAP) benefit group. ES [REDACTED] stated [REDACTED] was added in accordance with Department of Human Services Bridges Eligibility Manual (BEM) 212 Food Assistance Program Group Composition.

The Department's implementation of FEE investigations has resulted in a modest, but continuing, flow of hearings disputing actions taken on the basis of these investigations. Based on conducting a number of these hearings, this Administrative Law Judge has observed a common pattern. Office of Inspector General Regulation Agents gather information, arrive at a conclusion based on what they believe about the situation, and advise DHS case workers to take a direct case action based on their conclusion.

As long as the benefit recipient does not request a hearing, everything is fine. However, in an Administrative Law Hearing the Department has an initial burden of presenting competent, material and substantial evidence showing their action was correct in accordance with law and policy. In most of these hearing, including this one, the Department fails to meet their burden of going forward with sufficient evidence to support their conclusion. In most of these hearings, including this one, the investigation results in unclear, inconsistent, incomplete or contradictory information regarding an eligibility factor. In such circumstances, Bridges Administration Manual (BAM) 130 Verification and Collateral Contacts (2012) provides for obtaining verification and requiring the client to obtain the required verification. Bothering to take this additional step would probably eliminate many of these type hearings and at the least make for simpler and more succinct hearings.

As mentioned above, the Department has failed to meet their initial burden of providing competent, material and substantial evidence to show the case action was correct in accordance with law and policy.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides the Department has failed to meet their initial burden of providing competent, material and substantial evidence to show the case action was correct in accordance with law and policy and therefore cannot be upheld.

It is ORDERED that the actions of the Department of Human Services, in this matter, are **REVERSED**.

It is further ORDERED that Claimant's Food Assistance Program (FAP) be reinstated and continue to be processed in accordance with Department policy.

/s/

Gary F. Heisler
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: June 3, 2013

Date Mailed: June 4, 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 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the mailing 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.

GFH/aca

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