

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 20145434
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: November 14, 2013
County: Kent

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a telephone hearing was held on November 14, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED].

During the hearing, the Claimant disputed her denial of Food Assistance Program (FAP) benefits.

The Department provided documentation showing that the Claimant's application for Family Independence Program (FIP) and Medical Assistance (M.A.) was pending at the time her hearing request was received. The Claimant has 90 days from the date the Department sends her notification of her eligibility for these program to request a hearing to dispute those denials. The Claimant's hearing request is dismissed with respect to FIP and MA benefits only.

ISSUE

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

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 September 10, 2013, the Claimant applied for Food Assistance Program (FAP) benefits.

2. A child that the Claimant reported as living in her household was an active member of another Food Assistance Program (FAP) benefit group when the Claimant submitted her application for assistance.
3. The Claimant receives monthly earned income in the gross monthly amount of [REDACTED].
4. On September 25, 2013, the Department denied the Claimant's application for Food Assistance Program (FAP) benefit due to excess income.
5. The Department received the Claimant's request for a hearing on October 2, 2013, protesting the denial of her application for Food Assistance Program (FAP).

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, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 271.1 to 285.5. The Department (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10 and Mich Admin Code, R 400.3001 to .3015.

The Department will allow a shelter expense when the Food Assistance Program (FAP) group has a shelter expense or contributes to the shelter expense. *The Department does not prorate the shelter expense even if the expense is shared with others.* Department of Human Services Bridges Eligibility Manual (BEM) 554 (July 1, 2013), p 12.

All income is converted to a standard monthly amount. If the client is paid weekly, the Department multiplies the average weekly amount by 4.3. If the client is paid every other week, the Department multiplies the average bi-weekly amount by 2.15. Department of Human Services Bridges Eligibility Manual (BEM) 505 (July 1, 2013), pp 6-7.

The primary caretaker is the person who is primarily responsible for a child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. Department of Human Services Bridges Eligibility Manual (BEM) 212 (October 1, 2013), p 2.

If primary caretaker status is questionable or disputed, verification is needed. Id.

When primary caretaker status is questionable or disputed, the Department will base the determination on the evidence provided by the caretakers. Give each caretaker the opportunity to provide evidence supporting his/her claim. Suggested verifications include:

- The most recent court order that addresses custody and/or visitation.

- School records indicating who enrolled the child in school, first person contacted in case of emergency, and/or who arranges for 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(ren).
- Medical providers' records showing where the child lives and who generally takes the child to medical appointments. BEM 212, p 12.

In this case, the Claimant applied for Food Assistance Program (FAP) benefits as a group of two and her application for assistance indicated that she is the guardian of a minor child whose absent parents have had their parental rights terminated. The Claimant receives monthly earned income in the gross monthly amount of [REDACTED]. The Claimant's monthly prospective income was determined by multiplying her hourly pay rate of [REDACTED] by the 35 hours she expected to work each week by the 4.3 conversion factor. This was added to the [REDACTED] in tips the Claimant reported that she expected to make on a bi-weekly basis, multiplied by the 2.15 conversion factor.

The Department determined that the child listed on the Claimant's application for assistance was active on another Food Assistance Program (FAP) benefit group and determined the Claimant's eligibility for Food Assistance Program (FAP) as a group of one. The monthly gross income limit for a group of one is [REDACTED], and [REDACTED] for a group of two. The Department denied the Claimant's application for benefits because her income exceeds the gross income limit for a group of one.

The Department has the burden of presenting evidence to establish that it properly applied its policies to the Claimant's circumstances. The Department failed to establish that it requested verification of the Claimant's status as primary caretaker of a child as directed by BEM 212 where the primary caretaker is questionable or disputed.

This Administrative Law Judge finds that being an active member of a benefit group does not create a presumption that the person has been properly allocated to that benefit group. The Department has failed to establish that the Department properly determined the Claimant's Food Assistance Program (FAP) benefit group based on the information she reported during the application process, and the Department's denial of her application must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined the Claimant's Food Assistance Program (FAP) group composition and size.

Accordingly, the Department's decision is **REVERSED**.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Provide the Claimant with a ten-day period to clarify whether she is the primary caretaker of a child living in her household.
2. Provide the Claimant with a ten-day period to clarify her monthly shelter expenses as of her application date.
3. Initiate a determination of the Claimant's eligibility for Food Assistance Program (FAP) as of September 10, 2013.
4. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.
5. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.

/s/

Kevin Scully
Administrative Law Judge
for Maura D. Corrigan, Director
Department of Human Services

Date Signed: 11/19/2013

Date Mailed: 11/19/2013

NOTICE OF APPEAL: 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 or Reconsideration was made, within 30 days of the receipt date of the Decision and Order of Reconsideration or Rehearing Decision.

Michigan Administrative Hearing System (MAHS) 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. MAHS 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 (60 days for FAP cases).

A Request for Rehearing or Reconsideration may be granted when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;
- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

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The Department, AHR or the claimant must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date the hearing decision is mailed.

The written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-07322

KS/sw

cc:

A large black rectangular redaction box covers the names and contact information of the recipients listed in the 'cc:' field.