

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201316815
Issue No.: 2024, 3014
Case No.: [REDACTED]
Hearing Date: January 16, 2012
County: Gladwin

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, a telephone hearing was held on January 16, 2012, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED].

ISSUE

Whether the Department of Human Services (Department) properly determined the composition of the Claimant's benefit group?

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 was an ongoing Food Assistance Program (FAP) and Medical Assistance (MA) recipient.
2. On August 14, 2012, the Department sent the Claimant a Redetermination (DHS-1010) with a due date of September 4, 2012.
3. On August 28, 2012, the Department received the Claimant's completed Redetermination form. The Claimant used this form to notify the Department that her household had not changed in composition, and consisted of herself and her [REDACTED] [REDACTED].
4. On September 10, 2012, the Department sent the Claimant a Verification Checklist (DHS-3503) with a due date of September 20, 2012.

5. On September 24, 2012, the Department notified the Claimant that it would close her Medical Assistance (MA) and Food Assistance Program (FAP) benefits for failure to provide information necessary to determine her eligibility to receive benefits.
6. On October 4, 2012, the Office of Inspector General drafted the findings of an investigation into the composition of the Claimant's household members in a report, which was based on interviews with the Claimant, the Claimant's ex-██████████ and ██████████ of the Claimant.
7. On October 5, 2012, the Department sent the Claimant a Verification Checklist (DHS-3503) with a due date of September 20, 2012. The Department requested verification of assets and the income of the Claimant's ex-██████████
8. On October 17, 2012, the Department notified the Claimant that it would close her Food Assistance Program (FAP) and Medical Assistance (MA) benefits for failure to provide information necessary to determine her eligibility to receive benefits.
9. On October 25, 2012, the Department received the Claimant's application for Food Assistance Program (FAP) and Medical Assistance (MA) benefits.
10. On November 2, 2012, the Department sent the Claimant a Verification Checklist (DHS-3503) with a due date of November 13, 2012. The Department requested verification of income received by the Claimant's ex-██████████
11. On November 7, 2012, the Department received verification of employment for the Claimant's ██████████-husband.
12. On November 14, 2012, the Department notified the Claimant that it had denied her request for Food Assistance Program (FAP) benefits and approved her application for Medical Assistance (MA) with a deductible for certain group members.
13. The Claimant provided a document signed by her landlord that indicates that the Claimant's ex-██████████ is not a tenant of the Claimant's home.
14. The Claimant's ex-██████████ uses the Claimant's address as a mailing address.
15. The Department received the Claimant's request for a hearing on November 30, 2012, protesting the Department's determination of her eligibility for Food Assistance Program (FAP) and Medical Assistance (MA) benefits.

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).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or Department) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. 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).

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, 1999 AC, R 400.901 through Rule 400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because a claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by a Department action resulting in suspension, reduction, discontinuance, or termination of assistance. Rule 400.903(1). A request for hearing shall be in writing and signed by the claimant, petitioner, or authorized representative. Rule 400.904(1).

The Bridges Administrative Manual (BAM) 600, p. 4, provides in relevant part as follows:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. The request must be received anywhere in DHS within the 90 days.

In this case, the Department issued a Notice of Case Action on September 24, 2012, October 5, 2012, and November 14, 2012. The Department received a request for a hearing on November 30, 2012, and the Claimant indicated that she requested a hearing for case denial. This Administrative Law Judge finds that the actions taken by the Department described in each of these three Notice of Case Action forms falls within the jurisdiction of the Michigan Administrative Hearing System, and that the November 30, 2012, request for a hearing is timely for actions take during this period.

While determining the Claimant's eligibility for Medical Assistance (MA) and the Food Assistance Program (FAP), the Department has had reason to believe that the Claimant's ex-██████████ resides in her household and is a mandatory member of her benefit group. The Department has requested verification of income received by the Claimant's ex-husband, and denied benefits based on its determination that the ██████████ is a mandatory group member.

The Department's requests for verification documents and the eligibility determinations made from this information cannot be accurately examined without first settling the issue of group composition.

The Department determines who must be included in the Food Assistance Program (FAP) group prior to evaluating the non-financial and financial eligibility of everyone in the group. FAP group composition is established by determining all of the following:

- Who lives together.
- The relationship(s) of the people who live together.
- Whether the people living together purchase and prepare food together or separately.
- Whether the person(s) resides in an eligible living situation. Department of Human Services Bridges Eligibility Manual (BEM) 212 (November 1, 2012), pp 1-10.

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. First, determine if they must be included in the group. If they are not mandatory group members, then determine if they purchase and prepare food together or separately. BEM 212.

██████████ who are legally married and live together must be in the same group. Parents and their ██████████ under 22 years of age who live together must be in the same group regardless of whether the ██████████ have their own spouse or ██████████ who lives with the group. BEM 212.

In this case, no evidence was presented that the Claimant is legally married. The Claimant did not dispute that her ex-██████████ is the ██████████ of her ██████████ and that her ██████████ reside in her household. Therefore, Department policy requires that the ██████████ be considered a mandatory member of the Claimant's benefit group if he lives together with the Claimant's ██████████. If the ex-husband is "living with" his ██████████ it is not relevant whether he purchases and prepares food with his ██████████ or the Claimant.

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.

When determining eligibility for Medical Assistance (MA), "living with" others means sharing a home where family members usually sleep, except for temporary absences. Department of Human Services Bridges Eligibility Manual (BEM) 211 (November 1, 2012), p 2.

On October 4, 2012, the Office of Inspector General drafted the findings of an investigation into the composition of the Claimant's household members in a report, which was based on interviews with the Claimant, the Claimant's [REDACTED] and [REDACTED] of the Claimant. The report summarizes the circumstances of the living arrangements of the Claimant and her [REDACTED]. The Claimant was living at [REDACTED] [REDACTED]. Later the Claimant moved to her current address at [REDACTED] also in [REDACTED]. [REDACTED] to the Claimant reported that the Claimant's [REDACTED] was seen living in a [REDACTED] parked at the Claimant's home. The [REDACTED] reportedly was permitted to make use of the Claimant's utilities. The Claimant permitted her [REDACTED] to occasionally come into the home during periods of cold weather. The Claimant permitted her [REDACTED] to occasionally enter her home to watch television. The Claimant permitted her [REDACTED] to use her bathroom. The [REDACTED] reported spends less time on the Claimant's property at her current residence than at the residence on [REDACTED] because his employment as a truck driver requires him to be out of town for several days at a time.

The Claimant testified that neither she nor her [REDACTED] purchase or prepare food with her [REDACTED], and that he does not provide any financial support.

However, financial support is not necessary for a person to be considered "living with" persons in the benefit group.

Testimony and other evidence must be weighed and considered according to its reasonableness. *Gardiner v Courtright*, 165 Mich 54, 62; 130 NW 322 (1911); *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). Moreover, the weight and credibility of this evidence is generally for the fact-finder to determine. *Dep't of Community Health*, 274 Mich App at 372; *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), cert den, 318 US 783 (1943).

Department policy defines "living with" as a home where family members usually sleep and share any common living quarters. The evidence presented during the hearing supports a finding that the ex-husband is permitted to share common living quarters in the home by the Claimant. The evidence does not support a finding that the ex-husband usually sleeps in the home. Since the policy defines "living with" as where a family member usually sleep and share any common living quarters, the [REDACTED] living situation does not fit this definition because he does not usually sleep in the Claimant's home. The evidence supports finding that the [REDACTED] usually sleeps in a [REDACTED] parked at the Claimant's home and this Administrative Law Judge finds this to be a structure separate from the Claimant's home.

This Administrative Law Judge finds that the Department has failed to establish that the [REDACTED] is a mandatory member of the Claimant's benefit group. The Department has failed to establish that the Claimant failed to provide the Department with

information necessary to determine her eligibility. Therefore, this Administrative Law Judge finds that the Department failed to properly determine the Claimant's eligibility for Food Assistance Program (FAP) and Medical Assistance (MA).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department failed to establish that it properly determined the composition of the Claimant's benefit group when it determined her eligibility for Food Assistance Program (FAP) and Medical Assistance (MA) benefits.

Accordingly, the Department's Food Assistance Program (FAP) and Medical Assistance (MA) decision is REVERSED.

1. Initiate a determination of the Claimant's eligibility for Medical Assistance (MA) and the Food Assistance Program (FAP) as of November 1, 2012.
2. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.
3. 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: January 25, 2013

Date Mailed: January 25, 2013

NOTICE: 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)

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.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing MAY be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration MAY be granted for any of the following reasons:
- misapplication of manual policy or law in the hearing decision,
- typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
- the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at

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

KS/tb

cc:

