

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE

**IN THE MATTER OF:**

[REDACTED]

Reg. No: 2013-37731  
Issue Code: 3014  
Case No: [REDACTED]  
Hearing Date: April 25, 2013  
Calhoun County DHS

**ADMINISTRATIVE LAW JUDGE:** COREY A. ARENDT

**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 April 25, 2013, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED].

**ISSUE**

Did the Department properly close the Claimant's Food Assistance Program (FAP) case?

**FINDINGS OF FACT**

I find as material fact, based upon the competent, material and substantial evidence on the whole record:

1. On January 16, 2013, the 37<sup>th</sup> Judicial Circuit court issued a modification of child support order. The order indicates [REDACTED] (mother) has the children 183 overnights a year. The court relied on an income calculation worksheet in issuing the order. The income calculation worksheet indicates the mother has the children an average of 183 days a year and the Claimant has the children an average of 182 days a year.
2. As of February 2013, the Claimant received FAP benefits on behalf of his two children.
3. On February 1, 2013, the Claimant began serving a 12 month sanction from the FAP program due to an Intentional Program Violation (IPV).
4. On March 18, 2013, the Department sent the Claimant a notice of case action. The notice indicated the Department was closing the Claimant's FAP case as there were no eligible group members in his group.

5. On March 25, 2013, the Claimant requested a hearing to dispute the FAP closure.
6. On February 1, 2012, the Claimant requested a hearing in protest of the January 24, 2012 notice of case action.

### **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 FAP (formerly known as the Food Stamp (FS) program) was 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 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).

Bridges assists the Department in determining who must be included in the FAP group. The FAP group composition is established by determining BEM 212:

- 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) reside in an eligible living situation.

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. Spouses who are legally married and live together must be in the same group. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child has his/her own spouse or child who lives with the group. BEM 212.

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 (e.g., entrance or hallway) or non-living area (e.g., laundry) are not considered living together. BEM 212.

When a child spends time with multiple caretakers who do not live together such as joint physical custody a determination as to the primary caretaker must be made. Only one person can be the primary caretaker and the other is considered an absent caretaker.

The child is always in the FAP group of the primary caretaker. In determining the primary caretaker the Department looks at a twelve-month period. The home of the caretaker where the child spends the majority of their time (51% vs 49%) is considered the primary caretaker. BEM 212.

In the case at hand, there was a dispute as to who the primary caretaker was. The Claimant argued that he was the primary caretaker and that the children spend the majority of the time with him. The Claimant however was unable to present any documentation or evidence to outweigh the court order presented by the Department. Therefore, based upon the evidence presented, I find the Claimant to be the absent caretaker rather than the primary caretaker. And therefore, the Children were properly removed from his case.

There was no dispute as to the Claimant serving a 12 month sanction for an IPV finding. Consequently, the Claimant is considered a disqualified person and therefore ineligible for FAP benefits.

Based on the evidence presented, I find the Department properly removed the Claimant's children from the FAP group and properly closed the FAP case.

Accordingly, I **AFFIRM** the Agency's actions in this matter.

#### **DECISION AND ORDER**

I find, based upon the above findings of fact and conclusions of law, the Department properly removed the Children from the Claimant's FAP group and closed the FAP case.

Accordingly, the Department's actions are **AFFIRMED**.



---

Corey A. Arendt  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: April 26, 2013

Date Mailed: April 26, 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.

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

CAA/las

cc:

