

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 2013-46250
Issue No.: [REDACTED]
Case No.: [REDACTED]
Hearing Date: [REDACTED]
County: Kalamazoo DHS

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 [REDACTED] Lansing, Michigan. Participants on behalf of Claimant included [REDACTED]. Participants on behalf of Department of Human Services (Department) included [REDACTED] and [REDACTED].

ISSUE

Whether the Department of Human Services (Department) properly determined the size and composition of the Claimant's Food Assistance Program (FAP) 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 is an ongoing Food Assistance Program (FAP) recipient.
2. On [REDACTED], the Department made investigative findings into the composition of the Claimant's Food Assistance Program (FAP) benefit group and determined that members outside the Claimant's Food Assistance Program (FAP) group should be added to the Claimant's benefit group.
3. On [REDACTED] Department notified the Claimant that beginning [REDACTED] she was approved for Food Assistance Program (FAP) benefits as a group of seven as a result of the changes to her benefit group composition.

4. The Department received the Claimant's request for a hearing on [REDACTED], [REDACTED] protesting the Department's determination of the composition of her Food Assistance Program (FAP) benefit group.

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 (formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, *et seq.*, and 1999 AC, R 400.3001 through Rule 400.3015.

The Department will determine 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. Department of Human Services Bridges Eligibility Manual (BEM) 212 (November 1, 2012), pp 1-10.

Food Assistance Program (FAP) group composition is established by determining all of the following:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately.
4. Whether the person(s) resides in an eligible living situation. BEM 212.

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

Spouses who are legally married and live together must be in the same group. Parents and their children under [REDACTED] years of age who live together must be in the same 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 such as an entrance or hallway or non-living area such as a laundry room are not considered living together. BEM 212.

Persons purchase and prepare food together where they care food in common. Persons share food in common if:

- They each contribute to the purchase of food.

- They share the preparation of food, regardless of who paid for it.
- They eat from the same food supply, regardless of who paid for it. BEM 212.

In this case, the Claimant is an ongoing Food Assistance Program (FAP) recipient. On [REDACTED], the Department made investigative findings into the composition of the Claimant's Food Assistance Program (FAP) benefit group and determined that members outside the Claimant's benefit group should be added to the Claimant's benefit group. On [REDACTED] Department notified the Claimant that she was approved for Food Assistance Program (FAP) benefits as a group of seven as a result of the changes to her benefit group composition.

The Department issued investigative findings on [REDACTED], which resulted in a recommendation that all members of the [REDACTED] be added on the same Food Assistance Program (FAP) group.

No evidence was presented during the hearing to establish that the Claimant is under [REDACTED] years of age.

The Department's investigator determined that the Claimant and six other people live together at a residence and share common living quarters of the residence. The investigator testified that while there are separate refrigerators in the residence, that there is only one kitchen.

The Department's investigator made a collateral contact with [REDACTED], a member of the Claimant's Food Assistance Program (FAP) benefit group beginning [REDACTED] who signed a statement that she lives with her boyfriend and her two daughters that are not the Claimant.

The [REDACTED], investigation report indicates that the people living at the Claimant's residence were not cooperative with the Department's investigator, and that the investigator was denied entry into the residence on more than one occasion.

The Department closed four Food Assistance Program (FAP) benefit groups and combined the members of these groups into the Claimant's Food Assistance Program (FAP) benefit group.

On [REDACTED], the Department received the Claimant's request for a hearing to protest the amount of Food Assistance Program (FAP) benefits she is receiving from the Department.

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. The Michigan Administrative Hearing System (MAHS) may grant a hearing for any of the following:

- Denial of an application and/or supplemental payments
- Reduction in the amount of program benefits or service
- Suspension or termination of program benefits or service
- Restrictions under which benefits or services are provided
- Delay of any action beyond the standard of promptness
- For FAP only, the current level of benefits or denial of expedited service. Department of Human Services Bridges Assistance Manual (BAM) 600 (February 1, 2013), p 3.

Whether the four Food Assistance Program (FAP) benefit groups should have been closed and/or combined with each other is not relevant to the Claimant's [REDACTED], hearing request. The only issue to be determined here is whether the Department properly applied its policies when it determined the Claimant's eligibility for the Food Assistance Program (FAP) based on its revised determination of the composition of the Claimant's benefit group. The relationships between persons not in the Claimant's Food Assistance Program (FAP) group are not necessarily relevant to the findings of this hearing if policy does not require them to be in the Claimant's 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).

This Administrative Law Judge finds the Claimant's description of her living arrangements and the circumstances of her food preparation and purchases to be credible.

This Administrative Law Judge finds that the Department's investigator may have been frustrated by a lack of cooperation of the people with direct knowledge of their living arrangements and relationship to the Claimant. The Department's investigator conceded during the hearing that his investigation report was incomplete.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the Department's determination that the Claimant lives together with six other people assigned to her Food Assistance Program (FAP) group is

reasonable there is evidence that they share some common living quarters at their residence.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the Claimant's child is the only person that should be considered a mandatory group member of the Claimant's Food Assistance Program (FAP) group.

No evidence was presented during the hearing to support a finding that the Claimant's residence is a group home or an institutional setting.

Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the Department failed to establish that the Claimant purchases and prepares food together with all of the six people combined into her Food Assistance Program (FAP) group.

The Department's investigator's report includes his opinion that purchases made by the Claimant using her Food Assistance Program (FAP) were large. This Administrative Law Judge finds that this evidence is not conclusive that the Claimant was purchasing large amount for a large group of people.

In conclusion, based on the evidence and testimony available during the hearing, this Administrative Law Judge finds that the Department failed to present sufficient evidence to establish that it properly determined the size and composition of the Claimant's Food Assistance Program (FAP) group because it failed to establish that the Claimant purchases and prepares food together with each of the six other people combined into her Food Assistance Program (FAP) group.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department failed to properly determine the size and composition of the Claimant's Food Assistance Program (FAP) group as of [REDACTED].

The Department's Food Assistance Program (FAP) eligibility determination is **REVERSED**.

THE DEPARTMENT IS **ORDERED** TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Provide the Claimant with a ten-day period to clarify the composition of her household and the people that she purchases and prepares food with.
2. Initiate a determination of the Claimant's eligibility for Food Assistance Program (FAP) benefits as of [REDACTED].
3. Provide the Claimant with a Notice of Case Action (DHS-1605) describing the Department's revised eligibility determination.

4. 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: 06/18/2013

Date Mailed: 06/18/2013

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/kl

cc:

