

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

**IN THE MATTER OF:**



Reg. No.: 201419442  
Issue No.: 3001, 3007  
Case No.: [REDACTED]  
Hearing Date: February 13, 2014  
County: Calhoun

**ADMINISTRATIVE LAW JUDGE:** C. Adam Purnell

**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 three-way telephone hearing was held on February 13, 2014 from Lansing, Michigan. Claimant participated in the hearing by telephone. The Department of Human Services (Department) was represented by [REDACTED] [REDACTED] (Eligibility Specialist).

**ISSUES**

Did the Department properly determine Claimant's group composition for purposes of his Food Assistance Program (FAP) case?

Did the Department properly determine that Claimant was not eligible for FAP due to excess income?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant was active for FAP with a group size of 1.
2. On October 10, 2013, the Office of Inspector General (OIG) conducted a Front End Eligibility (FEE) Investigation which consisted of a "home call" to Claimant's address. The OIG determined that Claimant should be added to the household with his former spouse and their two children.

3. On November 8, 2013, the Department mailed Claimant a Notice of Case Action (DHS-1605) which, among other things, closed Claimant's FAP case effective December 1, 2013 due to excess income.
4. On December 17, 2013, the Department received Claimant's request for hearing protesting the FAP closure.

### **CONCLUSIONS OF LAW**

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

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's computer system known as "Bridges" helps to determine who must be included in the 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: (1) who lives together; (2) the relationships of the people who live together; (3) whether the people living together purchase and prepare food together or separately; and (4) whether the persons reside in an eligible living situation. BEM 212, p 1 (10-1-2013).

The relationships of the people who live together affects whether they must be included or excluded from the group. First, the Department must determine if they must be included in the group. If they are not mandatory group members, then the Department must determine if they purchase and prepare food together or separately. BEM 212, p 1 (10-1-2013).

Spouses who are legally married and live together must be in the same group. Children include natural, step and adopted children. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212, p 1 (10-1-2013). "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. BEM 212. 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, p 3 (10-1-2013).

A person who is temporarily absent from the group is considered living with the group. BEM 212. A person's absence is temporary if all of the following are true: (1) his or her location is known; (2) he or she lived with the group before his absence (newborns are considered to have lived with the group); (3) there is a definite plan for his or her return; and (4) the absence has lasted or is expected to last 30 days or less. Exception: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home. BEM 212.

The phrase, purchase and prepare together, is meant to describe persons who customarily share food in common. Persons customarily share food in common if: (1) they each contribute to the purchase of food; (2) they share the preparation of food, regardless of who paid for it; (3) they eat from the same food supply, regardless of who paid for it. In general, persons who live together and purchase and prepare food together are members of the FAP group. BEM 212 pp 5-6 (10-1-2013).

Persons who normally purchase and prepare separately maintain that distinction even when they are temporarily sharing food with others. BEM 212. Persons are temporarily sharing food if both of the following are true: (1) they had previously purchased and prepared separately; (2) others are sharing their food until the person: (a) is approved for FAP; (b) qualifies for other cash assistance; (c) secures some other source of income. BEM 212.

A member add that increases benefits is effective the month after it is reported or, if the new member left another group, the month after the member delete. BEM 212. In determining the potential FAP benefit increase, Bridges assumes the FIP/SDA supplement and new grant amount have been authorized. BEM 212. When a member leaves a group to apply on his own or to join another group, the Department must do a member delete in the month it learns of the application/member add. BEM 212. The Department will initiate recoupment if necessary. BEM 212. If the member delete decreases benefits, adequate notice is allowed. BEM 212.

The Department may request a Front End Eligibility (FEE) investigation from the Office of Inspector General (OIG) to complete a home visit to verify if the parent is out of the home. The Department worker shall not determine eligibility on the pending FIP EDG closure until the FEE agent completes an investigation. BEM 233A.

Persons might live with the FAP group or applicant group who are **not** group members. The Department does **not** consider their income and assets when determining the group's eligibility. BEM 212, p 9 (10-1-2013).

A live-in attendant lives in the group's home to provide housekeeping, medical or child care, or similar personal services. Persons who take someone into their own home to provide such services are **not** live-in attendants. The live-in attendant may apply for FAP as a separate group. Spouses, parents and children, and persons acting as a parent and the children they care for **cannot** be live-in attendants for one another, regardless of the actual situation. BEM 212, p 10 (10-1-2013).

Here, the Department contends that Claimant's FAP case was properly closed due to excess income. The Department indicates that Claimant reported that he was homeless, but that he used his ex-wife's address as his mailing address. The Department argues that Claimant should be added as a FAP group member to the same household with his ex-wife and their two daughters (ages 15 and 18). The Department further asserts that it properly included the earned income from Claimant's ex-wife when it determined Claimant's FAP eligibility. In support of their position, the Department relies upon an OIG FEE Investigation Report which reportedly showed that Claimant, during the relevant time period, spent Tuesdays, Thursdays and every other weekend at his ex-wife's house where he supervises their two daughters when his ex-wife attends college classes and he prepares meals for the children. The report indicates that Claimant had a bedroom in the basement and that he did not have separate food storage or labeled food. According to the report, Claimant stated that he spent the remaining nights at a friend's house. Claimant, on the other hand, believes that the Department should not include his ex-wife's earned income for FAP purposes. Claimant testified that he was transient and during the week he would alternate between spending nights at his ex-wife's house, his friend's place and his sister's home. But Claimant adamantly denied that he ever told the Department that he was homeless. Claimant stated that his ex-wife, at the time, was married, but separated from her husband. Claimant admitted that he spent a few nights each week at his ex-wife's house primarily to help with his children. Claimant stated that he does prepare food for his daughters when he is there, but that he does not rely on his ex-wife for financial support. Claimant also stated that he does not pay his ex-wife for meals or lodging.

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). 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). Moreover, it is for the fact-finder to gauge the demeanor and veracity of the witnesses who appear before him, as best he is able. See, e.g., *Caldwell v Fox*, 394 Mich 401, 407; 231 NW2d 46 (1975); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The first issue that must be determined is whether Claimant "lives with" his ex-wife and their 2 children. Claimant and his former spouse have 2 children in common. (It should be noted that Claimant's ex-wife is married but separated from her current husband, who does not live in the household.) Both the Department and Claimant agree that he spends at least 3 nights at his ex-wife's house. Further, Claimant did not deny that he shares food with his daughters when he is there and that his food is not kept separate from that of his ex-wife and children. The evidence shows that Claimant does sleep in a separate bedroom. Thus, this Administrative Law Judge finds that, for purposes of BEM 212, Claimant "lives with" his ex-wife and their 2 children because they share a home where family members usually

sleep and share common living quarters such as a kitchen, bathroom, bedroom and/or living room.

The next question is whether Claimant is “temporarily absent” from the home as defined by BEM 212. In order for Claimant to be considered temporarily absent, all of the following must be true: (1) his location must be known; (2) he lived with the group before his absence; (3) there is a definite plan for his return; and (4) the absence has lasted or is expected to last 30 days or less. Here, Claimant’s location is known as he stated that he regularly spent a few nights each week with his sister, his friend and then his former spouse/children. This is a regular routine that Claimant follows. Claimant did not deny that he and his ex-wife, at one point in time, lived together with their 2 children before they divorced approximately 13 years ago. However, immediately before he returned to his ex-wife’s house a few days per week, Claimant lived alone in an apartment before he lost his job in June, 2013 due to medical problems. This Administrative Law Judge finds that Claimant’s nights spent with his sister and his friend meet the second element because he lived with the group (his ex-wife and 2 children) immediately before his absence. Due to the fact that Claimant has a regularly scheduled routine, there is a definite plan of return and his absence from his ex-wife’s home is less than 30 days. Thus, Claimant may be considered temporarily absent from the home, but is still considered living with the group for FAP purposes. There is no evidence that Claimant is a “live-in attendant” as defined by BEM 212.

Based on the material, competent and substantial evidence on the whole record, this Administrative Law Judge finds that the Department properly determined Claimant’s FAP group composition. Therefore, the Department correctly added Claimant’s ex-wife to his FAP group and properly included her earned income for purposes of determining his FAP eligibility.

For FAP purposes, all earned and unearned income available to an applicant or recipient is countable. BEM 500. Earned income means income received from another person or organization or from self-employment for duties that were performed for compensation or profit. BEM 500.

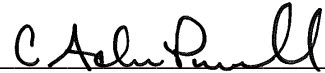
The record reveals that Claimant’s ex-wife was a FAP group member and was employed at all relevant times. Claimant’s ex-wife was receiving monthly earned income in the amount of [REDACTED] at the time relevant to this matter. This was confirmed by a copy of verification of employment income records contained in evidence. Therefore, Claimant’s group received a total monthly income of [REDACTED], which is reduced by a 20% earned income deduction of [REDACTED] and a standard deduction of [REDACTED], which leaves an adjusted gross income of [REDACTED]. ([REDACTED] - [REDACTED] - [REDACTED] = [REDACTED]) Claimant had a group size of 3 at the time. A person in Claimant’s category with a group size of 3 has a maximum net income limit of [REDACTED]. RFT 250. Because Claimant’s net income of [REDACTED] exceeded the allowable 100% net income limit of [REDACTED], Claimant is not entitled to FAP benefits for the time period in question.

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 acted in accordance with Department policy when it determined that Claimant's ex-wife was a member of his FAP group and that his FAP case should close due to excess income.

**DECISION AND ORDER**

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

IT IS SO ORDERED.



**C. Adam Purnell**  
Administrative Law Judge  
for Maura Corrigan, Director  
Department of Human Services

Date Signed: February 14, 2014

Date Mailed: February 18, 2014

**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.

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

201419442/CAP

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

CAP/aca

cc:

