

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201425124
Issue No.: 3001
Case No.: [REDACTED]
Hearing Date: February 27, 2014
County: Muskegon County DHS

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 February 27, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED] [REDACTED]. Participants on behalf of the Department of Human Services (Department) included [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED].

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's Food Assistance Program (FAP) 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. The Claimant is an ongoing Food Assistance Program (FAP) recipient.
2. On January 17, 2014, the Department notified the Claimant that it would close his Food Assistance Program (FAP) benefits as of February 1, 2014.
3. The Department received the Claimant's request for a hearing on January 27, 2014, protesting the closure of his Food Assistance Program (FAP) 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, 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.

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons resides in an eligible living situation. Department of Human Services Bridges Eligibility Manual (BEM) 212 (February 1, 2014), p 1.

When a child spends time with multiple caretakers who do not live together such as a joint physical custody, the Department will determine a primary caretaker. Only one person can be the primary caretaker and the other caretakers is considered the absent caretaker. The child is always in the Food Assistance Program (FAP) group of the primary caretaker. BEM 212.

The primary caretaker is determined from how many days that the child sleeps at the caretakers home on average each month over a twelve month period. If the child spends virtually half of the days in each month, the primary caretaker is the person that was first eligible for Food Assistance Program (FAP) benefits.

The Claimant is an ongoing Food Assistance Program (FAP) recipient. On January 17, 2014, the Department notified the Claimant that it would close his Food Assistance Program (FAP) benefits as of February 1, 2014.

The Claimant testified that following his divorce, an order establishing joint custody of children with his ex-wife. The Claimant testified that by agreement with his ex-wife, that court order is not being followed. The Claimant testified that by agreement, he cares for his children after school on Mondays and Wednesdays, and they spend every other weekend at his home.

Department policy does not base the primary caretaker for the food assistance benefits based on where the children eat their meals, but rather where they sleep on average each month. The Claimant testified that because he works a night shift, he and his ex-wife have come to the arrangement where he will care for the children after school on Mondays and Wednesdays, and they will spend every other weekend at this home. Since the children are not sleeping at the Claimant's home on Mondays and Wednesdays, these days are considered to be in the mother's care.

On January 17, 2014, the Department closed the Claimant's Food Assistance Program (FAP) benefits for failure to cooperate with the Office of Child Support. The Department provided evidence that this child support sanction was caused by a systems error. The Department's representative testified that when its evidence was being prepared, the Claimant's Food Assistance Program (FAP) benefits had not yet been restored. The Department's representative testified that the Claimant's Food Assistance Program (FAP) have been restored, but with his children removed from the benefit group because he is considered the absent caretaker.

While the Department's testimony is credible, the documentary evidence available during the hearing shows an action that was contrary to policy, and this Administrative Law Judge finds that the Department has failed to establish that this action was corrected. Therefore, the Department's eligibility determination is 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) benefits group as of February 1, 2014.

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. Allow the Claimant a ten-day period to clarify how many days his children have slept at this home over the past twelve months.
2. Initiate a determination of the Claimant's eligibility for Food Assistance Program (FAP) benefits as of February 1, 2014.
3. Provide the Claimant with a Notice of Case Action (DHS-16 05) describing the Department's revised eligibility determination.
4. Issue the Claimant any retroactive benefits he may be eligible to receive, if any.

Kevin


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

Date Signed: March 3, 2014

Date Mailed: March 3, 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

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/hj

cc:

