

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

IN THE MATTER OF:

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██████████████████

Reg. No.: 2014-31224
Issue No(s): 3007
Case No.: ██████████
Hearing Date: April 7, 2014
County: Wayne (55)

ADMINISTRATIVE LAW JUDGE: Eric Feldman

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 April 7, 2014, from Detroit, Michigan. Participants on behalf of Claimant included Claimant; Claimant's first Authorized Hearing Representative (AHR)/friend/interpreter, ██████████; and Claimant's second AHR, ██████████. Participants on behalf of the Department of Human Services (Department or DHS) included ██████████, Hearings Coordinator; and ██████████, Eligibility Specialist.

ISSUE

Did the Department properly determine Claimant's Food Assistance Program (FAP) group composition of five effective February 1, 2014, ongoing?

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 is an ongoing recipient of FAP benefits. See Exhibit 1.
2. On October 7, 2013, the Department's caseworker requested a Front-End Eligibility (FEE) referral to determine Claimant's FAP group composition. See Exhibit 1.
3. On October 21, 2013, the FEE investigative report concluded that Claimant's FAP group composition is five (Claimant, his spouse, two daughters, and son). See Exhibit 1.

4. On October 21, 2013, the FEE investigative report further indicated that Claimant failed to report his additional daughter as a group member and that she attended community college, took one class, and had employment. See Exhibit 1.
5. On December 23, 2013, Claimant submitted a redetermination (DHS-1010), which indicated a group composition of four (Claimant, his spouse, daughter, and son). See Exhibit 1.
6. Beginning with the January 2014 school semester, Claimant's daughter is 21-years-old, resides with the Claimant (her father), attends community college half-time (ten credits), and is employed more than 20 hours per week and paid for such employment.
7. Based on the prior FEE investigative report, the Department approved Claimant for FAP benefits; however, the benefits reflected a group composition of five rather than four.
8. On February 12, 2014, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits were approved in the amount of \$164 for a group composition of five effective February 1, 2014, ongoing. See Exhibit 1.
9. On March 4, 2014, Claimant filed a hearing request, protesting his FAP group composition. See Exhibit 1.

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.

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 (February 2014), p. 1.

In this case, Claimant is an ongoing recipient of FAP benefits. See Exhibit 1. On October 7, 2013, the Department's caseworker requested a FEE referral to determine Claimant's FAP group composition. See Exhibit 1. On October 21, 2013, the FEE investigative report concluded that Claimant's FAP group composition is five (Claimant, his spouse, two daughters, and son). See Exhibit 1. On October 21, 2013, the FEE investigative report further indicated that Claimant failed to report his additional

daughter as a group member and that she attended community college, took one class, and had employment. See Exhibit 1. On December 23, 2013, Claimant submitted a redetermination (DHS-1010), which indicated a group composition of four (Claimant, spouse, daughter, and son). See Exhibit 1. Based on the prior FEE investigative report, the Department approved Claimant for FAP benefits; however, the benefits reflected a group composition of five rather than four. On February 12, 2014, the Department sent Claimant a Notice of Case Action notifying him that his FAP benefits were approved in the amount of \$164 for a group composition of five effective February 1, 2014, ongoing. See Exhibit 1.

At the hearing, the Department testified that it did not send a Verification Checklist (VCL) before the Notice of Case Action to determine the group composition discrepancy. Before determining eligibility, the Department gives the client a reasonable opportunity to resolve any discrepancy between his statements and information from another source. BAM 130 (January 2014), p. 7. The Department testified that it subsequently sent a VCL on March 10, 2014, however, it was subsequent to the Notice of Case Action and Claimant's hearing request. This hearing decision will not address or discuss the VCL sent to the Claimant because it was a subsequent action that occurred after Claimant's hearing request. See BAM 600 (March 2014), pp. 4-6.

Claimant's main argument was that his daughter was separate from the household and she should not be included in the FAP group. Thus, Claimant testified that his FAP group composition should be four rather than five. Moreover, Claimant indicated that his daughter does not buy and prepare food with the family. See Request for Hearing, Exhibit 1. Claimant inferred that his daughter is not part of the household and even pays her own rent. It should be noted that Claimant is not disputing the FAP budget calculations; he testified that his only issue is the group composition.

Additionally, Claimant's daughter was present at the hearing. Claimant's daughter testified as to the following regarding the fall semester of 2013: she attended community college, took one class, and lived a majority of the time with her father (Claimant). Claimant's daughter further testified that when the Claimant submitted the redetermination, the group composition was actually four people. The daughter testified that she had moved out the second week of December 2013 and intended on remaining out of the home. However, the daughter testified that she ended up returning to the Claimant's home before the end of December 2013 and has lived there since.

Claimant's daughter also testified as to the following regarding the spring semester of January 2014: she is 21-years-old, resides with the Claimant (her father), attends community college half-time (ten credits), and is employed more than 20 hours per week and paid for such employment.

Persons might live with the FAP group or applicant group who are not group members. BEM 212, p. 9. Do not consider their income and assets when determining the group's eligibility. BEM 212, p. 9. This includes an ineligible student, who is a person who is in

student status and does not meet the criteria in BEM 245 is a non-group member. BEM 212, p. 9.

For FAP cases, a person enrolled in a post-secondary education program may be in student status. BEM 245 (July 2013), p. 1. A person in student status must meet certain criteria in order to be eligible for assistance. BEM 245, p. 1.

For FAP cases, a person is in student status if she is:

- Age 18 through 49 and
- Enrolled half-time or more in a:
 - Vocational, trade, business, or technical school that normally requires a high school diploma or an equivalency certificate.
 - Regular curriculum at a college or university that offers degree programs regardless of whether a diploma is required.

BEM 245, p. 3.

In order for a person in student status to be eligible, they must meet one of the criteria's listed in BEM 245. BEM 245, pp. 3-5. One of those criteria's includes being employed for at least 20 hours per week and paid for such employment. BEM 245, pp. 3-4.

Based on the foregoing information and evidence, the Department properly determined that Claimant's FAP group composition is five effective February 1, 2014, ongoing, in accordance with Department policy. BEM 212, p. 1 and BEM 245, p. 3.

First, it is harmless error by the Department for not requesting a VCL prior to the issuance of the Notice of Case Action because it is determined that Claimant's FAP group composition is still five. As stated previously, policy states that 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. It appeared that at the time the redetermination was submitted, Claimant's daughter was out of the home. However, the daughter indicated she returned to the home before the end of December 2013. Thus, before the end of the benefit period (January 31, 2014) and at the time the Notice of Case Action (dated February 12, 2014) was issued, Claimant's daughter was a mandatory FAP group member. Claimant's daughter is under 22 years of age who lives with her parents. Therefore, she is a mandatory FAP group member per BEM 212. BEM 212, p. 1.

Second, Claimant's daughter even met the definition of a person in student status. In regards to the fall semester of 2013, it appeared that Claimant's daughter was an ineligible student. See BEM 212, p. 9. Regardless, at the time of redetermination and the Notice of Case Action, Claimant's daughter was a person in student status. Claimant's daughter is between the ages of 18 through 49 and is enrolled in half-time or more in school. BEM 245, p. 3. Moreover, the daughter is employed for at least 20 hours per week and paid for such employment. BEM 245, pp. 3-4. As such,

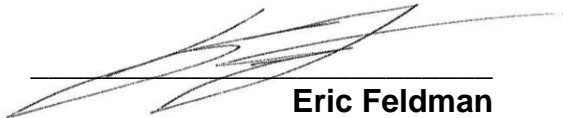
Claimant's daughter is not an ineligible student and she is FAP group member that is part of the Claimant's household. See BEM 212, p. 9.

In summary, the evidence presented that Claimant's FAP group composition is five effective February 1, 2014, ongoing, for the above reasons. Thus, the Department acted in accordance with Department policy when it properly determined that Claimant's FAP group composition is five effective February 1, 2014, ongoing. BEM 212, pp. 1 and 9 and BEM 245, pp. 3 and 4.

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 acted in accordance with Department policy when it properly determined that Claimant's FAP group composition is five effective February 1, 2014, ongoing.

Accordingly, the Department's FAP decision is AFFIRMED.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: April 9, 2014

Date Mailed: April 9, 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.

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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

EJF/cl

cc:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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