

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-015855
Issue No.: FAP
Case No.: [REDACTED]
Hearing Date: December 11, 2014
County: MUSKEGON

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 December 11, 2014, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED], the Claimant. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Family Independence Manager, and [REDACTED], Family Independence Manager.

ISSUE

Did the Department properly determine the amount of Claimant's Food Assistance Program (FAP) monthly allotment for October 2014?

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 received a FAP monthly allotment for October 2014 based on a group size that did not include her son [REDACTED]
2. On October 29, 2014, Claimant filed a request for hearing contesting the amount of her FAP monthly allotment since March 2014.

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 273. The Department

(formerly known as the Family Independence Agency) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001 to .3015.

Regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in Mich Admin Code, R 400.901 through R 400.951. Rule 400.903(1) provides as follows:

An opportunity for a hearing shall be granted to an applicant who requests a hearing because [a] claim for assistance is denied or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by a Department action resulting in suspension, reduction, discontinuance, or termination of assistance.

A request for hearing must be in writing and signed by the claimant, petitioner, or authorized representative. Mich Admin Code, R 400.904(1). Moreover, the Department of Human Services Bridges Administrative Manual (BAM) 600 provides in relevant part as follows:

The client or authorized hearing representative has *90 calendar days from the date of the written notice of case action to request a hearing*. The request must be received anywhere in DHS within the 90 days. [Emphasis added.]

Additionally, benefits stop at the end of the benefit period unless a redetermination is completed and a new benefit period is certified. BAM 210.

As discussed during the hearing proceeds, this ALJ has no jurisdiction to review the March 2014 actions regarding Claimant's FAP case because the hearing request was filed October 29, 2014, well over the 90 day timeframe to appeal a case action.

However, for the FAP program only, a hearing can be requested disputing the current level of benefits at any time within the benefit period. BAM 600. Accordingly, there is jurisdiction to review only the amount of Claimant's FAP benefits the month she filed the hearing request, October 2014.

Claimant's is contesting the group size for her FAP case, which affects the FAP benefit amount.

When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., the Department is to determine a primary caretaker. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent care-taker(s). The child is **always** in the FAP group of the primary care-taker. If the child's parent(s) is living in the home, he/she must be included in the FAP group. BEM 212.

If the child spends virtually half of the days in each month, averaged over a twelve-month period with each caretaker, the caretaker who applies and is found eligible first, is the primary caretaker. The other caretaker(s) is considered the absent caretaker(s). BEM 212.

The prior case actions will be discussed solely for the purpose of providing back ground explaining why the October 2014 FAP allotment was based on a group size that did not include her son, B.J. As stated above, this ALJ has no jurisdiction to review the March 2014 case actions.

Claimant previously received a greater FAP monthly allotment based on a group size that included her son [REDACTED]. It appears there was a closure of Claimant's prior FAP case effective March 1, 2014 based on a failure to complete the required Redetermination. Claimant reapplied for FAP on March 11, 2014, but the ongoing approval could only be based on a group size that did not include [REDACTED]. By that time [REDACTED] had been included in a FAP case with his father based on the father's March 6, 2014 application. The submitted order for parenting time stated that the parties have joint legal and physical custody with a schedule of alternating week parenting time. Therefore, [REDACTED] was included in the father's FAP case because his March 6, 2014, FAP application was filed before Claimant's March 11, 2014 FAP application.

There was no evidence that there was a change in the parenting time order by October 2014 or that the child's father's FAP case had closed. [REDACTED] still could not be included as a group member for determining Claimant's FAP monthly allotment for October 2014, because this child was already included in another FAP case. Therefore, Claimant's October 2014 FAP monthly allotment was properly based on a group size that did not include B.J.

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 Claimant's FAP monthly allotment for October 2014.

DECISION AND ORDER

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



Colleen Lack
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: **12/15/2014**
Date Mailed: **12/15/2014**

CL/hj

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion.

MAHS **MAY** grant a party's Request for Rehearing or Reconsideration 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 party requesting a rehearing or reconsideration 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 this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, 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 48909-8139

cc:

