

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 14-013775
Issue No.: 1007, 3008
Case No.: [REDACTED]
Hearing Date: November 18, 2014
County: Saginaw

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 telephone hearing was held on November 18, 2014 from Lansing, Michigan. Claimant personally appeared and provided testimony. Participants on behalf of the Department of Human Services (Department) included [REDACTED] (Hearing Facilitator).

ISSUES

Did the Department properly close Claimant's Family Independence Program (FIP) or (cash assistance) benefits?

Did the Department properly determine Claimant's eligibility for Food Assistance Program (FAP) benefits?

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 actively receiving FAP and FIP benefits with a group size of 6 at all relevant times.
2. The Department indicated that the mother of Claimant's 5 (five) children ([REDACTED]) had used 61 (sixty-one) countable months of FIP assistance and her FIP case closed on or about February 12, 2013. (Exhibit 1, p. 20)
3. Claimant had been receiving FIP benefits for the 5 (five) children since the mother's FIP case closed. (Exhibit 1, p. 20)

4. At all relevant times, Claimant owned real property located at [REDACTED]. (Exhibit 1, pp. 22-26).
5. The Department's records indicated that Claimant resided at [REDACTED].
6. The Department received an anonymous tip that Claimant lived with the mother of his 5 (five) children at [REDACTED].
7. On September 8, 2014, the Department requested the Office of Inspector General (OIG) conduct a Front End Eligibility (FEE) investigation to determine Claimant's residence and group composition. (Exhibit 1, p 20).
8. On September 19, 2014, the Department mailed Claimant a Notice of Case Action (DHS-1605) which indicated that Claimant's FIP case would close effective October 1, 2014 based on the following reasons: "Group not eligible because no group member is an eligible child" and "you failed to verify or allow the department to verify information necessary to determine eligibility for this program." (Exhibit 1, pp. 1-5). The comments from Claimant's specialist indicated, "Per Office of Inspector General, Recommend closing the FIP case as client and Shatoya Laster are residing together."
9. On September 29, 2014, the Department received Claimant's request for hearing concerning the following programs "cash and food." (Claimant's Exhibit A, pp. 4-8).

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).

Here, Claimant requested a hearing concerning Family Independence Program (FIP) and Food Assistance Program (FAP) benefits. The Department is required to address both programs in response to the request for hearing.

Family Independence Program (FIP) or "cash" assistance benefits

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, and 42 USC 601 to 679c. The Department (formerly known as the Family Independence Agency) administers FIP pursuant to 45 CFR 233-260, MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3101 to .3131.

Group composition is the determination of which individuals living together are included in the FIP eligibility determination group/program group and the FIP certified group. To be eligible for FIP both of the following must be true:

- The group must include a dependent child who lives with a legal parent, stepparent or other qualifying caretaker.
- The group cannot include an adult who has accumulated more than 60 TANF funded months, beginning October 1, 1996 or any other time limits in the Family Independence Program; see BEM 234. BEM 210, p. 1 (7-1-2014).

Living together means sharing a home where family members usually sleep except for temporary absences. The primary caretaker is the caretaker who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a month, when averaged over a twelve-month period. The twelve-month period begins at the time the determination is being made. Once a caretaker is determined to be the primary caretaker, the child's other caretakers are considered absent caretakers. BEM 210, p. 3.

A temporarily absent person is considered to be living in the home when **all** of the following are true:

- Individual's location is known.
- There is a definite plan to return.
- The individual lived with the FIP EDG before the absence (newborns are considered to have lived with the FIP EDG).
- The absence has lasted or is expected to last 30 days or less.
- **Exception:** An individual is still considered to be living in the home, even after 30 days if the absence reason is any of the following:
 - In the hospital (including a psychiatric hospital).
 - In a residential substance abuse treatment center.
 - Absent for school or training.
 - Absent due solely to active duty in the uniformed services of the U.S.
 - A child who is living apart from a parent due solely to the parent residing in a domestic violence shelter. BEM 210, pp 3-4.

The primary caretaker is the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half the days in a month, when averaged over a twelve-month period. BEM 210, p. 9.

Here, the Department submits that Claimant's FIP case should be closed because both Claimant and [REDACTED] reside together at her address ([REDACTED]). According to the Department, [REDACTED] is no longer eligible for FIP benefits due to reaching the 60 month time limit. In other words, the Department, by implication, suggests that the Claimant falsely reported his place of residence and group composition in order to obtain FIP benefits. The Department contends that after [REDACTED] FIP case closed due to reaching the 60 month time limit, the Claimant began receiving FIP benefits for their 5 children by misrepresenting that his residence address as [REDACTED]. The Department largely relies upon a purported FEE Report. According the FEE Investigation Report, the Claimant stated on September 19, 2014, that he resided at [REDACTED], but that he only used [REDACTED] as a mailing address. The FEE Report further noted that [REDACTED] temporarily relocated to [REDACTED] to care for her sister who was ill and that the Claimant was taking care of the children at [REDACTED] residence.

The Claimant, on the other hand, contends that the Department's plan to close his FIP case was based on inaccurate information about his living arrangements. The Claimant states that he only uses [REDACTED] house at [REDACTED] as his mailing address, but that he does not "live" there. The Claimant states that he lived with his aunt at [REDACTED] until April, 2014 when he moved into his home at [REDACTED]. The Claimant indicated that he wished to have a hearing concerning the amount of his FAP benefits.

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 Department provided evidence from the Saginaw Area GIS Authority to show that Claimant purchased the property located at [REDACTED] on or about February 12, 2014. (Exhibit 1, p 24) In response, the Claimant stated that although he purchased this house, it was not immediately habitable so he was lived with his aunt at [REDACTED] until April, 2014. The Claimant offered a copy of a bill in his name from Consumers Energy for his address at [REDACTED] which showed his "move-in service" date was February 26, 2014.

According to the FEE Investigation Report, the Claimant stated that he stayed at [REDACTED] residence at [REDACTED] so that the children would not have a break in their routine. During the hearing, the Claimant stated that the FEE Investigator never visited the [REDACTED] address. The Claimant testified that his 5 children were all registered to attend school near the [REDACTED] address.

The undersigned has reviewed all of the evidence of record. The Department's primary evidence was the September 8, 2014 FEE Complaint Receipt email which appears to show a request for investigation. The statements contained in the Complaint Narrative shows that this is a request for an investigation, but it does not appear to show results of the investigation. The Department did not include any exhibits other than several notices of case action (many of which were subsequent to the Claimant's September 29, 2014 request for hearing), an email request for a FEE Investigation and some documents to show that Claimant owned the property at 2930 E Washington. There were no documents in the record that showed the OIG's findings arising out of the FEE Investigation.

In the instant matter, the FIP issue concerns whether Claimant falsely reported to be the primary caretaker for his 5 children when the primary caretaker was actually [REDACTED], who was not eligible for FIP due to reaching the 60 month time limit. As indicated above, the Department failed to include any detailed results of the FEE Investigation. The Notices of Case Action do not tend to prove or disprove whether Claimant was being deceitful. The substantial, material and competent evidence does not show that the Claimant resided at [REDACTED] with [REDACTED]. With additional evidence, the undersigned is unable to evaluate whether the Department accurately determined Claimant's FIP eligibility and/or benefit amount.

Accordingly, this Administrative Law Judge finds that the Department has failed to carry its burden of proof and did not provide information necessary to enable this ALJ to determine whether the Department followed policy as required under BAM 600. By this decision; however, this Administrative Law Judge does not necessarily find that the Department's decision to close Claimant's FIP case due to his group composition and/or residence was improper. This decision merely indicates that the Department failed to provide sufficient evidence in the hearing packet.

Food Assistance Program (FAP) benefits

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.

With regard to FAP, the Department contends that the Notice of Case Action dated September 19, 2014, did not take any negative action against Claimant's FAP benefits. However, for FAP purposes, a person may request a hearing regarding the current level of benefits or denial of expedited service. BAM 600, pp. 4-5 (10-1-2014). Here, the Department failed to include a budget summary or other documents from Bridges to show the current level of benefits. Without these documents, the ALJ cannot determine whether Claimant's current level of FAP benefits is appropriate.

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 responded to Claimant's request for hearing concerning FIP and FAP benefits.

DECISION AND ORDER

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

THE DEPARTMENT IS ORDERED INITIATE 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. Redetermine Claimant's FIP and FAP eligibility back to September, 2014.
2. Provide Claimant with written communication regarding his FIP and FAP eligibility.
3. Only if extent required by policy, the Department shall provide Claimant with retroactive and/or supplemental FIP and FAP.

IT IS SO ORDERED.



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

Date Signed: **11/24/2014**

Date Mailed: **11/24/2014**

CAP/sw

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:

