

**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.: 14-017668
Issue No.: 3001
Case No.: ██████████
Hearing Date: February 09, 2015
County: Wayne-District 15

ADMINISTRATIVE LAW JUDGE: Zainab Baydoun

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 9, 2015, from Detroit, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Human Services (Department) included ██████████ ██████, Eligibility Specialist and ██████████, Eligibility Specialist.

ISSUE

Did the Department properly process Claimant's 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 an ongoing recipient of FAP benefits.
2. Claimant's daughter, ██████ was previously included as a FAP group member on Claimant's FAP case.
3. Claimant and ██████ father have joint legal and physical custody of the child. (Exhibit A)
4. On November 26, 2014, the Department sent Claimant a Notice of Case Action informing her that effective January 1, 2015, her FAP benefits would be

decreased, as [REDACTED] was removed from Claimant's FAP case on the basis that the child was no longer living with Claimant. (Exhibit 1)

5. On December 5, 2014, Claimant requested a hearing disputing the Department's actions.

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.

Additionally, food assistance group composition is established by determining, who lives together, the relationships of the people who live together, whether the people living together purchase and prepare food together or separately and whether the person resides in an eligible living situation. BEM 212 (July 2014), p. 1. Parents and their children under 22 years of age who live together must be in the same group regardless of whether the children have their own spouse or child who lives with the group. BEM 212, p. 1. 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 of the days in a calendar month, on average, in a twelve month period. BEM 212, p. 2.

When a child spends time with multiple caretakers who do not live together such as joint physical custody, the Department is to determine a primary caretaker. Only one person can be the primary caretaker and the other caretaker is considered the absent caretaker. The child is always in the FAP group of the primary care-taker. BEM 212, p. 3. The Department is to determine primary caretaker by using a twelve month period and if questionable or disputed, the Department is to allow both caretakers to provide evidence supporting their claim and verification, as provided by policy. BEM 212, p. 4, 12-13. 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 is considered the absent caretaker. BEM 212, p. 4.

In this case, Claimant's daughter, [REDACTED], was included as a member of Claimant's FAP case since the child's birth in [REDACTED]. The Department testified that in November 2014,

the child's father, [REDACTED] applied for benefits and indicated that he was the primary caretaker of the child. On November 26, 2014, the Department sent Claimant a Notice of Case Action informing her that effective January 1, 2015, her FAP benefits would be decreased, as [REDACTED] was removed from her FAP case on the basis that the child was no longer living with Claimant. (Exhibit 1). The Department testified that prior to the Notice of Case Action being issued, an investigation was done and it was determined that the child's father was the primary caretaker. Although the Department provided a case comments summary referencing an investigation, the Department failed to present any documentation to support its finding that the child's father should be the primary caretaker or that the child should be included on the father's FAP case. (Exhibit 2). The Department made reference to a domestic violence case in which Claimant was the defendant, however, this is irrelevant to the determination concerning primary caretaker.

At the hearing, Claimant testified that she and [REDACTED] father have joint physical and legal custody of [REDACTED]. Claimant stated that she previously had full custody of the child but that in October 2014, joint custody was ordered. Claimant provided a Court Order in support of her testimony which indicates that Claimant and the child's father will alternate parenting time every other week, which is consistent with Claimant's testimony. (Exhibit A). Claimant also testified that she takes the child to all medical appointments. Claimant further indicated that the child was removed from her case and her FAP benefits decreased in November 2014, as opposed to January 2015, however, there was insufficient evidence to support Claimant's testimony. Thus, it is determined that the effective date of the negative action is January 1, 2015, as noted in the Notice of Case Action.

Under the facts in this case, where there is documented joint custody of the child and Claimant applied for and was determined eligible to receive FAP benefits for child first, this 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 after further review, the Department failed to satisfy its burden of showing that it acted in accordance with Department policy when it removed Claimant's daughter from her FAP case and determined that Claimant was not the primary caretaker of the child.

DECISION AND ORDER

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. Recalculate Claimant's FAP budget for January 1, 2015, ongoing, to include her daughter, [REDACTED] as a member of the FAP group; and
2. Issue FAP supplements to Claimant from January 1, 2015, ongoing.



Zainab Baydoun
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/19/2015**

Date Mailed: **2/19/2015**

ZB / tlf

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:

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