

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-005926
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: May 27, 2015
County: Ingham

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on May 27, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included Hearings Facilitator [REDACTED].

ISSUE

Did the Department properly reduce Claimant's Food Assistance Program (FAP) benefits when she refused to provide information about her child's father so the Department could include him in her group?

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 on-going FAP recipient.
2. On [REDACTED], Claimant had a child.
3. The Department determined that the child's father was spending one or more nights per month at Claimant's home and requested information from Claimant regarding the father so that he could be added to her FAP group. A Verification Checklist (VCL) was mailed to Claimant on March 11, 2015, with a due date of March 23, 2015, asking her to provide a copy of the father's Social Security card. (Exhibit A Pages 27-28.) A second VCL was mailed on March 23, 2015, with a

March 30, 2015 due date, requesting the same document. Claimant was told that information was required in order for her to continue receiving FAP.

4. Claimant declined to provide the information believing it was an invasion of her privacy for her to have to “ask permission” for her to have a man spend the night in her home.
5. The Department received Claimant's hearing request on April 9, 2015.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, 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 Department of Human Services) administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011.

In this case, the Department requested information from Claimant regarding the father of her infant. The Department had concluded that the father was spending at least one night per month with Claimant in her home and, based upon its reading of the policy found in BEM 212 (7/1/14) and believing the father is a mandatory group member because they have a mutual child.

BEM 212 at page 1 defines Parents and Children.

Children include natural, step and adopted children.

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 does not define “live together” but it defines “living with” as follows:

Living with means sharing a home where family members usually sleep and share **any** common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share **only** an access area such as an entrance or hallway or non-living area such as a laundry room are **not** considered living together.

A Front End Eligibility (FEE) investigation was conducted by the Office of the Inspector General. The FEE report is found in Exhibit A Pages 30-31. They found that the father had been spending some nights at Claimant's home. During the hearing, Claimant testified that she was no longer in a relationship with the child's father, other than him occasionally visiting the home to spend time with his child. Claimant takes great exception to the idea that she should have to ask permission from the Department for her to have a man spend the night with her at her home. It was explained that she was not being told that she had to ask permission for that, but instead if he was a part of her household, she had to provide the information in order to be eligible to receive FAP.

Claimant testified that the last time the father stayed at her home was in the first part of January 2015. She further testified that the last time she saw him was two days ago. While she testified that they were no longer dating, she also testified that she did not think they should have to spend money on a hotel if they wanted to be intimate.

The FEE investigation included interviews with people including Claimant and the father. The father admitted that he sometimes spends the night with her. He lives with his mother most of the time, and his mother reported that he spends the night at Claimant's home as well as spending nights with other friends.

If it is determined that the father is a mandatory group member, and if he and Claimant refuse to provide his Social Security number, they are disqualified from receiving FAP. See BEM 212 at page 8, and BEM 223.

The Department's interpretation of the policy is that, if the father spends one night per month at the Claimant's home, he is a mandatory group member. A thorough search of BEM 212 does not support such an interpretation. As stated above, "living with" means sharing a home where family members usually sleep and share any common living quarters such as a kitchen, bathroom, bedroom or living room. The FEE investigation leads to the conclusion that the father usually sleeps at his mother's home, but from time to time, he also sleeps at Claimant's home as well as other homes.

The conclusion is that the child's father usually lives with his mother, not with the Claimant. If the Department's interpretation were to hold, a man could have children with three different women and, if he spent one night each month with each of the women, he would be a mandatory member of three groups. Even with spouses, they are not mandatory group members unless they are legally married and live together.

Before concluding this Decision, it will be noted that Claimant was not a credible witness. She was minimizing the time that the child's father spent at her home. However, even the FEE investigation lacked sufficient evidence to support a finding that he was a part of her household. If the Department obtains additional evidence that he is truly a part of her household, it can reevaluate her on-going eligibility. But at this point, the facts do not support the Department's position.


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 did not act in accordance with Department policy when it required Claimant's child's father to be a mandatory group member.

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. Redetermine Claimant's FAP eligibility without including [REDACTED] in her group, and issue a supplement to her for any benefits improperly not issued.



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/29/2015**

Date Mailed: **5/29/2015**

DJ/jaf

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 copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Hearing Decision from 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:

