

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

IN THE MATTER OF:



Reg. No.: 15-012732
Issue No.: 3001
Case No.: [REDACTED]
Hearing Date: August 26, 2015
County: WAYNE-DISTRICT 19

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 August 26, 2015, from Detroit, Michigan. Participants on behalf of Claimant included the Claimant, [REDACTED] (who appeared as an interpreter), and [REDACTED] (who appeared as an interpreter). Participants on behalf of the Department of Health and Human Services (Department) included [REDACTED], Hearing Facilitator.

ISSUE

Did the Department properly deny the Claimant's application for Food Assistance?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Claimant is hearing impaired and communicates through sign language.
2. The Claimant's FAP application of [REDACTED] was denied on [REDACTED] for failure to verify information.
3. The application was denied due to Claimant's failure to participate in a phone interview, as suggested by the hearing summary prepared by the Department, and thus failed to verify information.
4. The Claimant lives in a separate room in [REDACTED] house and is not related to him as a family member. The Claimant purchases and prepares her own food and has her own refrigerator.

5. The Claimant has no income and pays no rent, and thus could not verify rent. The Claimant cannot communicate over the telephone.
6. The Claimant notified the Department that she was hearing impaired in her application and that she could not attend the telephone interview, as she is hearing impaired and her interpreter cannot hear well over the phone.
7. The Claimant requested a hearing on [REDACTED], protesting the Department's actions.

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 denied the Claimant's application for food assistance based upon its determination that the Claimant was in the same FAP group as her boyfriend and his father (whom she is not related to) and denied the Claimant's application based upon Claimant's failure to verify information. The Claimant is hearing impaired and could not participate in a telephone interview. The Department did not apparently provide for the Claimant's hearing impairment. In addition, the Notice of Case Action indicates denial for failure to verify, which the hearing summary indicates is due to failing to participate in a phone interview.

At the hearing the Claimant credibly testified that she prepares and purchases her own food and lives separately in her own bedroom in the house where she resides and has her own refrigerator. She is not a family member of the household. Based upon the Department policy referenced below, the Department's determination denying the Claimant's FAP application is incorrect and the Claimant and her boyfriend and father are not part of the same FAP group; Claimant applied on her own behalf and is not a family member. In addition, it does not appear that accommodation was made for the Claimant's hearing impairment as the Department states in its hearing summary that the Claimant could not be reached by phone. The Claimant was not granted an interpreter because none was available, even though she put in her application she was hearing

impaired. Further the Claimant may have been denied because she did not participate in a phone interview. The evidence presented indicated that she could not participate by phone due to her hearing impairment. Department policy specifically provides necessary assistance for hearing impairment at all phases of dealing with the Department.

All Programs

The local office must assist clients who ask for help in completing forms or gathering verifications. Particular sensitivity must be shown to clients who are illiterate, disabled or **not** fluent in English.

The department will provide appropriate interpreters to persons with limited English proficiency (LEP) to afford such persons an equal opportunity to participate in or benefit from MDHHS programs and services. The department and its contracted service providers will take reasonable steps to provide services and information in appropriate languages to ensure that LEP individuals are effectively informed, notified of their rights and responsibilities and can effectively participate in and benefit from MDHHS programs, services and activities.

The department will provide appropriate interpreters to persons with limited English proficiency (LEP) to afford such persons an equal opportunity to participate in or benefit from MDHHS programs and services. The department and its contracted service providers will take reasonable steps to provide services and information in appropriate languages to ensure that LEP individuals are effectively informed, notified of their rights and responsibilities and can effectively participate in and benefit from MDHHS programs, services and activities. BAM 105, (July 2015) p. 14-15

Department policy referenced below clearly does not require that the Claimant must be a group member together with her boyfriend and his father, who are not her family members.

Food Assistance Program group composition is established by determining all of the following:

1. Who lives together.
2. The relationship(s) of the people who live together.

3. Whether the people living together purchase and prepare food together or separately.
4. Whether the person(s) resides in an eligible living situation; see **LIVING SITUATIONS** in this item.

BEM 212 (October 2014) p. 1

As regards food purchase and preparation policy provides:

The phrase, purchase and prepare together, is meant to describe persons who usually share food in common.

Persons usually share food in common if any of the following conditions exist:

- They each contribute to the purchase of food.
- They share the preparation of food, regardless of who paid for it.
- They eat from the same food supply, regardless of who paid for it.

In general, persons who live together and purchase and prepare food together are members of the FAP group. BEM 212 , p.5-6

The following example demonstrates that the Claimant can be, and is in her own FAP group.

Example: Betty and her two children move in with Sara, Betty's friend. Sara purchases and prepares food separately from Betty and her two children. They are two groups for FAP purposes. BEM 212 p. 6

The Claimant does not purchase and prepare food with either her boyfriend or his father and thus the Department improperly determined that she was in the same FAP group as her boyfriend and his father.

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 denied the Claimant's application for either failure to verify information because she could not be reached by phone, or its determination that the Claimant must reapply because she failed to include her boyfriend and his father in the same FAP group.

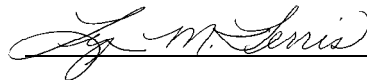
DECISION AND ORDER

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. The Department shall reregister and reprocess the Claimant's July 6, 2015 application for Food Assistance in accordance with the finding in this Decision that she does not purchase and prepare food with her boyfriend or his father, and that her boyfriend and father are not mandatory member of her FAP group.
2. The Department shall seek appropriate means of communication with the Claimant as required by Department policy and hearing impairment.
3. The Department shall issue a FAP supplement to the Claimant for any FAP benefits she is otherwise entitled to receive in accordance with Department policy.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **9/2/2015**

Date Mailed: **9/2/2015**

LMF / hw

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:

