

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-012946
Issue No.: 3008
Case No.: [REDACTED]
Hearing Date: September 01, 2015
County: Muskegon

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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on September 1, 2015 from Lansing, Michigan. The Claimant and her mother [REDACTED] personally appeared and testified. [REDACTED] (Family Independence Manager) and [REDACTED] (Eligibility Specialist) represented the Department of Health and Human Services (Department).

ISSUE

Did the Department properly determine Claimant's proper group composition for purposes of the Food Assistance Program (FAP)?

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 active for FAP with a monthly allotment of \$ [REDACTED] and a group size of 5 (five).¹
2. Claimant was divorced and she shared joint custody of her 2 children with her ex-husband at all relevant times. (Exhibit 1, pp. 8-12)
3. In April, 2015, Claimant's ex-husband applied for FAP assistance and listed the 2 minor children as household members.
4. On April 29, 2015, the Department mailed Claimant a Notice of Case Action (DHS-1605) which, effective May 1, 2015, reduced Claimant's household group size to 3 and decreased Claimant's monthly FAP allotment to \$ [REDACTED] (Exhibit 1, pp. 2-3)

¹ At the time, Claimant had listed her 2 minor children in her FAP household.

5. Claimant requested a hearing to dispute the FAP reduction on July 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.

The Department's computer system known as "Bridges" assists the Department when determining who must be included in the FAP group prior to evaluating the non financial and financial eligibility of everyone in the group. BEM 212 (7-1-2014), p. 1. FAP 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; and (4) whether the person(s) resides in an eligible living situation. BEM 212, p. 1.

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. BEM 212, p. 1. First, the Department must determine if the individual(s) must be included in the group. BEM 212, p. 1.

Children include natural, step and adopted children. BEM 212, p.1. 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, p. 1.

When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., the Department will determine a primary caretaker. BEM 212, p.1-2. 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.

Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). BEM 212, p. 3. The child is always in the FAP group of the primary caretaker. If the child's parent(s) is living in the home, he/she must be included in the FAP group. BEM 212, p. 3.

The Department will determine a primary caretaker by using a twelve-month period. BEM 212, p. 4. The twelve-month period begins when a primary caretaker determination is made. BEM 212, p. 4. To determine the primary caretaker the Department must do the following: (1) ask the client how many days the child sleeps at his/her home in a calendar month; (2) accept the client's statement unless questionable or disputed by another caretaker. BEM 212, p. 4.

If primary caretaker status is questionable or disputed, verification is needed. BEM 212, p. 4. The Department will allow both caretakers to provide evidence supporting his/her claim. BEM 212, p. 4. The Department will base its determination on the evidence provided by the caretakers. BEM 212, p. 4.

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. BEM 212, p. 4. The other caretaker(s) is considered the absent caretaker(s). BEM 212, p. 4.

The Department may re-evaluate primary caretaker status when any of the following occur: (1) a new or revised court order changing custody or visitation is provided; (2) there is a change in the number of days the child sleeps in another caretaker's home and the change is expected to continue, on average, for the next twelve months; (3) a second caretaker disputes the first caretaker's claim that the child(ren) sleeps in their home more than half the nights in a month, when averaged over the next 12 months; (4) a second caretaker applies for assistance for the same child. BEM 212, p. 5.

When primary caretaker status is questionable or disputed, policy requires the Department base the determination on the evidence provided by the caretakers. BEM 212. The Department shall "[g]ive each caretaker the opportunity to provide evidence supporting his/her claim." BEM 212, p. 5. Suggested verifications include: (1) the most recent court order that addresses custody and/or visitation; (2) school records indicating who enrolled the child in school, first person contacted in case of emergency, and/or who arranges for child's transportation to and from school; (3) child care records showing who makes and pays for child care arrangements, and who drops off and picks up the child(ren); (4) medical providers' records showing where the child lives and who generally takes the child to medical appointments. BEM 212.

Here, the Department argues that Claimant is not the primary caretaker of her 2 children and that the 2 children should be added to the father's FAP group. Claimant, on the other hand, contends that although the children are enrolled in the school district where the father resides, she and the father share joint custody and each share 50% of the time with each child. Claimant and her mother both dispute the purported findings of the FEE investigation report that was not included into evidence.

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. Here, there is clearly a dispute about whether or not Claimant is the primary caretaker of her daughter. The Department, in the hearing summary, indicates that at the time the summary was prepared that it did not complete the evaluation to determine the primary caretaker of Claimant's 2 children. The Department did receive a subsequent verification that appeared to show that 1 of the children attended ██████ schools, but the record did not contain evidence that the Department completed its determination. As indicated above, BEM 212, p. 4, provides that if primary caretaker status is questionable or disputed, verification is needed. The policy further provides that the Department will allow both caretakers to provide evidence supporting his/her claim. BEM 212, p. 4. The Department will base its determination on the evidence provided by the caretakers. BEM 212, p. 4.

The substantial, material and competent evidence in this record shows that the Department did not follow BEM 212 when it determined that Claimant was not the primary caretaker. The Department should have allowed both of the putative caretakers to provide evidence. The Department also failed to include a copy of the FEE investigation report into the record. The references to the OIG report in the case notes were not sufficient to replace the FEE investigation report nor did it definitively establish whether Claimant was the primary caretaker.

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 determined that Claimant was not the primary caretaker and, as a result, reduced her FAP allotment. This Administrative Law Judge; however, does not find that Claimant was the primary caretaker. The only decision is that the Department did not provide enough evidence to support its decision.

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 proper FAP group composition and whether Claimant is the primary caretaker of the 2 children during the relevant time period.

2. Redetermine Claimant's FAP eligibility and/or allotment amount.
3. To the extent required by policy, the Department shall provide Claimant with retroactive and/or supplemental FAP.



C. Adam Purnell
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

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

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

CAP/las

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:

