

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-015744
Issue No.: 3007
Agency Case No.: [REDACTED]
Hearing Date: October 13, 2015
County: Kent-District 1

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 October 13, 2015 from Lansing, Michigan. Claimant personally appeared and provided testimony. [REDACTED] (# [REDACTED] from [REDACTED] provided interpretation services. [REDACTED] (Case Manager) and [REDACTED] (Family Independence Manager) represented the Department of Health and Human Services (Department). Agent [REDACTED] of the Office of Inspector General (OIG) testified as a witness for the Department.

ISSUE

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

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 benefits. (Exhibit 1, p 9)
2. On June 17, 2015, the Department mailed Claimant a Notice of Case Action (DHS-1605) which increased her monthly FAP allotment to \$ [REDACTED] and indicated a household size of 4. (Exhibit 1, pp 10-12)
3. On or about June 24, 2015, the Department received Claimant's completed Change Report (DHS-2240) which indicated that Claimant's son was expected to be added to the group on June 24, 2015. (Exhibit 1, pp 5-6)

4. On July 17, 2015, the Department requested a Front End Eligibility (FEE) Investigation to determine whether Claudia Arevalo (Claimant's daughter) received Medical Assistance (MA) benefits in Texas and Michigan. (Exhibit 1, p 7)
5. On July 27, 2015, the FEE Investigation revealed that, pursuant to a PARIS match, Claimant's daughter, from February 1, 2015 through the current date: (1) received dual MA benefits in both in Texas and Michigan; and (2) "appears to no longer be a resident of Michigan." (Exhibit 1, p 7)
6. The Department determined that Claimant's FAP \$ [REDACTED] monthly allotment did not change because Claimant's son was added to the group and her daughter was removed at the same time. The Department did not mail Claimant a DHS-1605. Claimant's FAP benefits were ongoing.
7. On August 28, 2015, Claimant requested a hearing to dispute the Department's failure to include her daughter to her FAP case.

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" will help determine who must be included in the FAP group prior to evaluating the non-financial and financial eligibility of everyone in the group. 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 (7-1-2014).

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. First, the Department must determine if they must be included in the group. If they are not mandatory group members, then the Department must determine if they purchase and prepare food together or separately. BEM 212, p 1.

Spouses who are legally married and live together must be in the same group. 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. But for ongoing and intake applications where the child is not yet 22, they are potentially eligible for their own case, the month after turning 22. BEM 212, p 1.

“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. BEM 212, p 3. 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. BEM 212, p 3.

A person who is temporarily absent from the group is considered living with the group. BEM 212, p 3. A person's absence is temporary if all of the following are true: (1) his or her location is known; (2) he or she lived with the group before his absence (newborns are considered to have lived with the group); (3) there is a definite plan for his or her return; and (4) the absence has lasted or is expected to last 30 days or less. Exception: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home. BEM 212, p 3.

A member add that increases benefits is effective the month after it is reported or, if the new member left another group, the month after the member delete. BEM 212, p 9. When a member leaves a group to apply on his own or to join another group, the Department must do a member delete in the month it learns of the application/member add. BEM 212, p 9. The Department will initiate recoupment if necessary. BEM 212, p 9. If the member delete decreases benefits, adequate notice is allowed. BEM 212, p 9.

The Department may request a Front End Eligibility (FEE) investigation from the Office of Inspector General (OIG) to complete a home visit to verify if the parent is out of the home. The Department worker shall not determine eligibility on the pending FIP EDG closure until the FEE agent completes an investigation. BEM 233A.

To be eligible for FAP benefits, a person must be a Michigan resident. BEM 220 (7-1-2014), p 1.

A person is considered a resident while living in Michigan for any purpose **other than a vacation**, even if there is no intent to remain in the state permanently or indefinitely. Eligible persons may include:

- Persons who entered the state with a job commitment or to seek employment; and
- Students (for FAP **only**, this includes students living at home during a school break.) BEM 220, p 1.

The Department must verify that the individual lives in the area the local office serves. BEM 220, p 5. If an individual is temporarily absent from Michigan, verify the intent to return. BEM 220, p 6.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. BEM 222 (7-1-2013), p 1. A person cannot receive FAP in more than one state for any month. BEM 222, p 3.

Here, the Department contends that Claimant's daughter was properly removed from her FAP group because she was not a member of her household (and/or had an active FAP case in Texas) at the time of the FEE Investigation. Claimant testified that her daughter lived with her uncle in Texas for 2 months in January and February, 2015. According to Claimant, her daughter has lived with her in Michigan ever since. Claimant conceded that her daughter was active for FAP in Texas at some point in time and that she had difficulty closing the case.

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 FEE Investigation Report contained in the record reveals that Claimant's daughter did not live with Claimant and was not a Michigan resident from February 1, 2015 to July, 2015. Most importantly, the PARIS match showed that Claimant's daughter was receiving dual MA benefits in Michigan and Texas during this time period. Claimant, during the hearing, confirmed that her daughter did not live with her in January and February, 2015. In addition, Claimant also stated that her daughter had an active FAP case (with her uncle) in Texas and that the State of Texas did not remove her from that case. Claimant's testimony coupled with the documentation shows that the Department was unable to confirm that Claimant's daughter was not active for FAP in Texas and Michigan concurrently.

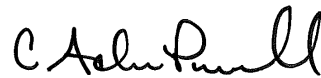
Based on the information that the Department had at the time, the Department was authorized to remove Claimant's daughter from her FAP case based on the FEE Investigation and PARIS match results. However, the Department would be well-served to confirm whether Claimant's daughter current has dual FAP assistance in Texas and Michigan and whether she is a proper group member going forward.

The material, competent and substantial evidence on the whole record shows that the Department acted properly when it refused to include Claimant's daughter to her FAP case. It should also be noted that Claimant's monthly FAP assistance (\$ [REDACTED]) did not change after adding Claimant's son and removing Claimant's daughter from the household group.

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 acted in accordance with Department policy when it failed to include Claimant's daughter as a FAP group member without verification that she did not receive dual assistance.

DECISION AND ORDER

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



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

Date Signed: 10/15/2015

Date Mailed: 10/15/2015

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:

