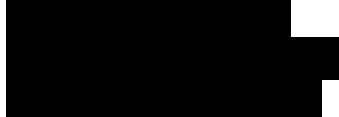


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 15-000618
Issue No.: FOOD ASSISTANCE PROGRAM
Case No.: [REDACTED]
Hearing Date: February 18, 2015
County: WASHTENAW (DISTRICT 20)

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 18, 2015, from Lansing, Michigan. Participants on behalf of Claimant included LaShonda Owen. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Hearing Facilitator.

ISSUE

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

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 FAP recipient with her child in the FAP group.
2. A September 11, 2014, Referee Recommendation and Order- Amended documented a recommendation for the child's father to have temporary physical and legal custody of the child and the matter was adjourned to an October 1, 2014 hearing date.
3. On October 3, 2014, the local Department office for Claimant's FAP case received an email from the local Department office for the father's case to remove the child from Claimant's FAP case because the child was now residing with the father.
4. On October 3, 2014, a Notice of Case Action was issued to Claimant stating the FAP case would decrease to \$ [REDACTED] effective October 1, 2014, because the child is no longer in the home.
5. On November 3, 2014, Claimant submitted a letter from the child's school verifying the child's address on file was Claimant's address.

6. On January 6, 2015, Claimant filed a request for hearing contesting the Department's action.
7. On January 12, 2015, a Benefit Notice was issued stating Claimant's FAP benefits decreased to \$194 effective November 1, 2014.

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.

Clients must cooperate with the local office in determining initial and ongoing eligibility. This includes completion of necessary forms. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105, 10-1-2014, p. 7.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. BAM 105, p. 10.

When a child spends time with multiple caretakers who do not live together such as joint physical custody, parent/grandparent, etc., determine a primary caretaker. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent care-taker(s). The child is **always** in the FAP group of the primary care-taker. If the child's parent(s) is living in the home, he/she must be included in the FAP group. BEM 212, 7-1-2014, p. 3. (emphasis in original)

The BEM 212 policy addresses determining the primary caretaker:

Determine primary caretaker by using a twelve-month period. The twelve-month period begins when a primary caretaker determination is made. To determine the primary caretaker:

- Ask the client how many days the child sleeps at his/her home in a calendar month.
- Accept the client's statement unless questionable or disputed by another caretaker.

Note: When a caretaker works during a child's normal sleep hours, include the nights the child sleeps away from home when due solely to the

caretaker's employment as nights slept in the home of the caretaker; see Example 3.

- If primary caretaker status is questionable or disputed, verification is needed.
- Allow both caretakers to provide evidence supporting his/her claim.
- Base your determination on the evidence provided by the caretakers; see **VERIFICATION SOURCES**.
- Document who the primary caretaker is in the case.

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(s) is considered the absent caretaker(s).

BEM 212 p. 4

Re-evaluate primary caretaker status when any of the following occur:

- A new or revised court order changing custody or visitation is provided.
- 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.
- 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.
- A second caretaker applies for assistance for the same child.

BEM 212 p. 5

For FAP, the Department is to act on a change reported by means other than a tape match within 10 days of becoming aware of the change. Changes which result in an increase in the household's benefits must be effective no later than the first allotment issued 10 days after the date the change was reported, provided any necessary verification was returned by the due date. A supplemental issuance may be necessary in some cases. If necessary verification is not returned by the due date, take appropriate action based on what type of verification was requested. If verification is returned late, the increase must affect the month after verification is returned. If the reported change will decrease the benefits or make the household ineligible, action must be taken and a notice issued to the client within 10 days of the reported change. BAM 220, 10-1-2014, pp. 6-7.

Verification is usually required upon application or redetermination and for a reported change affecting eligibility or benefit level. Verifications are considered timely if received by the date they are due. For FAP, the Department must allow a client 10 calendar days (or other time limit specified in policy) to provide the requested verification. The Department worker must tell the client what verification is required, how to obtain it, and the due date. BAM 130 (10-1-2014) pp. 1-6.

For FAP, if the client contacts the Department prior to the due date requesting an extension or assistance in obtaining verifications, the Department must assist them with the verifications but not grant an extension. The Department worker must explain to the client they will not be given an extension and their case will be denied once the due date is passed. Also, the Department worker shall explain their eligibility and it will be determined based on their compliance date if they return required verifications. BAM 130. The Department must re-register the application if the client complies within 60 days of the application date. BAM 130, pp. 6-7.

In this case, Claimant was an ongoing FAP recipient with her child in the FAP group.

A September 11, 2014, Referee Recommendation and Order- Amended documented a recommendation for the child's father to have temporary physical and legal custody of the child and the matter was adjourned to an October 1, 2014 hearing date. This document indicated the child was currently living with the father.

On October 3, 2014, the local Department office for Claimant's FAP case received an email to remove the child from Claimant's FAP case because the child was now residing with the father. Accordingly, on October 3, 2014, a Notice of Case Action was issued to Claimant stating the FAP case would decrease to \$ [REDACTED] effective October 1, 2014, because the child is no longer in the home.

Claimant contests the Department's action and believes the Department never should have taken the child off her case. Claimant testified the child was only with the father temporarily from the September 11, 2014, Referee Recommendation. At the October 1, 2014, court date, Claimant testified that the Referee Recommendation was declined and the child was immediately returned to Claimant's home. Claimant called the Department and was told that documentation from the school would be sufficient evidence to have the child put back on her FAP case. It is noted that there is no evidence that the Department issued a written request for this verification. On November 3, 2014, Claimant submitted a letter from the child's school verifying the child's address on file was Claimant's address. Email correspondence between the two local Department offices indicated the local Department office for the father's case wanted further verification, specifically further court documentation, to remove the child from the father's case. It is noted that there is no evidence that any additional verification was requested from Claimant.

Claimant testified she provided a copy of the court documentation from October 1, 2014, hearing with her January 6, 2015, to the Department with the hearing request for this case, and again at the January 16, 2015 pre-hearing conference. If a copy was submitted with the hearing request, it is not clear why it was not included in the hearing packet forwarded by the Department. However, the Hearing Facilitator was able to

confirm that on January 16, 2014, it appears the Department received the updated court documentation, but she was unable to view the scanned document.

This ALJ understands that the Department tried to follow policy to timely change what home the child lived in when the father provided court documentation. As written, the September 11, 2014, Referee Recommendation and Order- Amended appears to only be a recommendation for the child's father to have temporary physical and legal custody of the child, though this document also indicated the child was currently living with the father. Claimant's testimony acknowledged that the child lived with the father until the October 1, 2014, court hearing.

However, Claimant testified that as of October 1, 2014, the Referee Recommendation was declined and the child immediately returned to her home. Claimant testified she called the Department to let them know and then provided what she was told would be acceptable proof, the letter from the school. When the Department was notified by Claimant that the child was back in her home, the Department should have issued a written request for any needed verification telling Claimant what verification is required, how to obtain it, and the due date. When the verification from the school was submitted but not determined to be sufficient, the Department again should have issued a written request for any needed verification telling Claimant what verification is required, how to obtain it, and the due date. Rather, it appears that the Department has failed to take any action on the reported change that the child moved back into Claimant's home. Further, the Hearing Facilitator's testimony indicated that at least on January 16, 2015, the Department received additional court documentation. Overall, the Department has not provided sufficient evidence that Claimant's FAP monthly allotment was properly determined. Claimant's FAP monthly allotment should be re-determined retroactive to October 1, 2014, to include requesting any verification(s) that may still be needed.

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 failed to satisfy its burden of showing that it acted in accordance with Department policy when it determined Claimant's FAP monthly allotment.

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. Re-determine Claimant's FAP eligibility retroactive to the October 1, 2014, to include requesting any verification(s) that may still be needed, in accordance with Department policy.
2. Issue written notice of the determination in accordance with Department policy.

3. Supplement for lost benefits (if any) that Claimant was entitled to receive, if otherwise eligible and qualified in accordance with Department policy.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **2/26/2015**

Date Mailed: **2/26/2015**

CL/hj

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:

