

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-003996
Issue No.: 3007
Case No.: [REDACTED]
Hearing Date: April 16, 2015
County: Kalamazoo

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 April 16, 2015, from Lansing, Michigan. Participants on behalf of Claimant included herself and [REDACTED]. Participants on behalf of the Department of Health and Human Services (Department) included Regulation Agent [REDACTED] Family Independence Specialist (FIS) [REDACTED] and Hearing Facilitator [REDACTED].

ISSUE

Did the Department properly add [REDACTED] to Claimant's Food Assistance Program benefit group beginning April 1, 2015?

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 recipient of Food Assistance Program benefits. Claimant's registered Food Assistance Program benefit group included: herself; her daughter, [REDACTED]; and [REDACTED], Claimant's child in common with [REDACTED].
2. On February 28, 2015, Regulation Agent [REDACTED] submitted a Front End Eligibility Investigation (FEE) report. The report concluded that [REDACTED] resided in Claimant's household and should be added to Claimant's Food Assistance Program benefit group.
3. On March 3, 2015, [REDACTED], along with his Social Security Administration disability benefits, was added to Claimant's Food Assistance Program benefit group. Claimant was sent a Notice of Case Action (DHS-1605) which stated her Food Assistance Program benefits would be reduced beginning April 1, 2015.
4. On March 4, 2015, Claimant submitted a hearing request.

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.

Bridges Eligibility Manual (BEM) 212 Food Assistance Program Group Composition (2014) provides guidance on determining the members of a Food Assistance Program benefit group. Page 3 states:

LIVING WITH

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.

For policy regarding persons in other group living situations; see BEM 617.

Temporary Absence

A person who is temporarily absent from the group is considered living with the group.

A person's absence is temporary if all of the following are true:

The person's location is known.

The person lived with the group before an absence (newborns are considered to have lived with the group).

There is a definite plan for return.

The absence has lasted or is expected to last 30 days or less.

Claimant asserts that [REDACTED] does not live with her, so he should not be on her Food Assistance Program case. Both the Department and Claimant have submitted a significant amount of evidence in support of their respective positions. The evidence from both sides presents evidentiary issues which will be explained in this Decision & Order because Claimant does not have legal representation. Admission of evidence during an Administrative Law Hearing on Department of Human Services' matters is not strictly governed by the Michigan Rules of Evidence. In accordance with the Michigan

Administrative Procedures Act, an Administrative Law Judge may admit and give probative effect to any evidence. However, the final decision and order must be supported by and in accordance with competent, material, and substantial evidence.

Black's Law Dictionary defines competent evidence as: "That which the very nature of the thing to be proven requires, as, the production of a writing where its contents are the subject of inquiry. Also generally, admissible or relevant, as the opposite of incompetent."

Black's Law Dictionary defines incompetent evidence as: "Evidence which is not admissible under the established rules of evidence; evidence which the law does not permit to be presented at all, or in relation to the particular matter, on account of lack of originality or of some defect in the witness, the document, or the nature of the evidence itself. The Michigan Rules of Evidence include:

Rule 102 Purpose

These rules are intended to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

Rule 601 Witnesses; General Rule of Competency

Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.

Rule 602 Lack of Personal Knowledge

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Rule 801 Hearsay; Definitions

The following definitions apply under this article:

(a) *Statement*. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) *Declarant*. A "declarant" is a person who makes a statement.

(c) *Hearsay*. "Hearsay" is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Rule 802 Hearsay Rule

Hearsay is not admissible except as provided by these rules.

The Department's primary evidence in support of their action is the testimony of Regulation Agent (RA) [REDACTED]. He made a site visit to Claimant's residence on February 27, 2015. Everything that he saw and heard during that site visit is competent evidence. However, there are subtle but critical distinctions contained in the Rules of Evidence which dictate what that competent evidence can be used as proof of. As an example, RA [REDACTED] testimony that he heard [REDACTED] state that he [REDACTED] lived with his Aunt [REDACTED] is admissible as evidence to prove that [REDACTED] made the statement. RA [REDACTED] was present and can testify competently to what he heard.

However, RA [REDACTED] statement of what [REDACTED] said is not admissible to prove that what [REDACTED] said is true. RA [REDACTED] statement of what [REDACTED] said is hearsay and not admissible as evidence to prove that [REDACTED] lives with his Aunt [REDACTED].

Evidentiary standards of admissibility were applied to the evidence submitted by the Department. There is competent and undisputed evidence in the record that: [REDACTED] was inside Claimant's residence during the day on February 27, 2015; that medication was delivered to [REDACTED], at Claimant's residence during the day on February 27, 2015; that [REDACTED] stated he lived with his Aunt [REDACTED] and gave RA [REDACTED] a telephone number to contact his Aunt [REDACTED] and RA [REDACTED] called the telephone number and had a conversation with a female.

The Department also submitted information about [REDACTED] which had been printed from the Social Security Administration database on April 15, 2015. The information showed that [REDACTED] is designated as [REDACTED] "payee". The residence address on file with the Social Security Administration is [REDACTED] [REDACTED] Claimant's address.

During this hearing Claimant testified that [REDACTED] does not reside with her. She testified that he stayed at her residence with the children February 14-19, 2015 because she was in the hospital. During the hearing [REDACTED] testified that he lives with his Social Security Administration benefits payee, [REDACTED]. Claimant submitted a written statement from [REDACTED] which states [REDACTED] "resides" with him. The statement was notarized by Claimant. Claimant also submitted: a single page lease amendment dated January 13, 2015, which contains no relevant information; student verification information for both her children which contains no relevant information; documentation of medical services Claimant received from various locations between February 9 and March 5, 2015.

The Social Security Administration record of [REDACTED]'s residence at Claimant's address is admissible. The Department has met its initial burden of going forward with evidence to support their action. Claimant and [REDACTED] provided admissible, rebutting evidence that [REDACTED] does NOT reside at Claimant's residence. Resolution of this case requires acceptance of one party's evidence over the other. 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). Moreover, 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). In evaluating the credibility and weight to be given the testimony of a witness, the fact-finder may consider the demeanor of the witness, the reasonableness of the witness's testimony, and the interest, if any, the witness may have in the outcome of the matter. *People v Wade*, 303 Mich 303 (1942), *cert den*, 318 US 783 (1943).

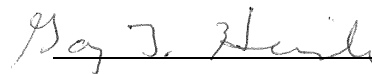
On February 27, 2015, while speaking with RA [REDACTED] [REDACTED] stated he did not live with Claimant. [REDACTED] made the assertion that he lived with his Aunt [REDACTED] Claimant, [REDACTED] and RA [REDACTED] have all stated that subsequently, Aunt [REDACTED] did not corroborate that claim. At this hearing [REDACTED] asserts that he resides with his Social Security Administration payee, [REDACTED]. The fact that [REDACTED] changed his assertion of residence as soon as Aunt [REDACTED] failed to back it up completely undermines his credibility.

Claimant asserts that [REDACTED] does not reside with her. She has dutifully chimed in to support [REDACTED] changing assertions of residence. Claimant has been inconsistent about [REDACTED] residence. A determination that [REDACTED] resides with her will have a significant impact on the amount of Food Assistance Program benefits she receives. Those factors undermine Claimant's credibility.

The Social Security Administration's record of [REDACTED] residence is based on information he provided to them. 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 added [REDACTED] to Claimant's Food Assistance Program benefit group beginning April 1, 2015.

DECISION AND ORDER

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



Gary Heisler
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **4/27/2015**

Date Mailed: **4/27/2015**

GH/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:

