

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-005912
Issue No.: 3001
Case No.: [REDACTED]
Hearing Date: May 27, 2015
County: Ogemaw

ADMINISTRATIVE LAW JUDGE: Darryl Johnson

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 May 27, 2015, from Lansing, Michigan. Participants on behalf of Claimant included Claimant. Participants on behalf of the Department of Health and Human Services (Department) included Family Independence Specialist [REDACTED] and General Services Program Manager [REDACTED]. Regulation Agent (RA) [REDACTED] appeared on behalf of the Office of the Inspector General (OIG).

ISSUE

Did the Department properly close Claimant's Food Assistance Program (FAP) benefits?

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 on-going FAP recipient.
2. On February 20, 2015, Claimant applied for State Emergency Relief (SER) and identified her household members as herself and her daughter.
3. After her SER application was denied, Claimant provided a note from her landlord showing that she was past due on her rent. The letter was addressed to Claimant and [REDACTED] ([REDACTED] herein), a man Claimant identified as a former boyfriend.

4. Claimant has a [REDACTED]-year-old son, [REDACTED] ([REDACTED] herein), who was working at the time of Claimant's SER application, and who has a residence address that is the same as Claimant's.
5. Claimant did not list [REDACTED] or [REDACTED] as members of her household.
6. The Department requested a Front End Eligibility (FEE) investigation from the OIG into the proper group members of Claimant's FAP group.
7. The OIG concluded that both [REDACTED] and [REDACTED] were members of Claimant's household, and they were included in her FAP group.
8. The group's income exceeded the limits for her to receive FAP, and Claimant's FAP was closed effective April 1, 2015. (Exhibit A Pages 20-24.)
9. The Department received Claimant's hearing request on April 8, 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.

Claimant testified that neither [REDACTED] nor [REDACTED] live with her. She identified [REDACTED] as an ex-boyfriend who lives with his aunt in [REDACTED] most of the time. She said [REDACTED] works in the oil fields so he is gone for weeks at a time before he comes home to stay with her. She said that [REDACTED] was originally on her lease because she needed him to sign it for her to get into the home. She said [REDACTED] name was on her utility bills because she had an outstanding balance with [REDACTED] and could not get that service without him being on the account.

In Claimant's SER application (Exhibit A Pages 9-11) dated March 11, 2015, she was instructed to list household vehicles, and specifically asked to identify cars, trucks, boats, camper/trailers, motorcycles, RVs, and other vehicles. She listed just a [REDACTED]. As a result of the FEE investigation, it was discovered that she has other vehicles listed in her name. [REDACTED] and [REDACTED] also have vehicles in their respective names which were not included in the application. Descriptions of the vehicles are

found in Exhibit A Pages 27-36. The vehicles include a 1995 and 1997 Kawasaki jet skis; 2004 and 2006 Harley Davidson motorcycles; 2003 Chevrolet pickup; 2009 Ford Escape; 1994 Lincoln car; 1993 Ford pickup. When asked about the various vehicles, Claimant made attempts to explain why each one (other than the Ford Escape) was not included in her application. She said the Lincoln was titled in her name, but was actually owned by [REDACTED] father and, because he does not have a valid driver's license, she let him put it in her name. She said the Lincoln was good for nothing but scrap. However, the RA spoke with [REDACTED] father and he said the Lincoln ran like a charm. A copy of the Lincoln title indicates it was issued to Claimant on [REDACTED] [REDACTED]. (Exhibit B Page 36.) When asked about the Harleys, she said one was given to her "about a year ago" by [REDACTED] but then said she's had it since 2012. She said hers is a 2006 Sportster. She testified that [REDACTED] acquired the other Harley this year. She said the two jet skis were [REDACTED] and only one is functional. She further testified that the Ford pickup belongs to [REDACTED]

In a SER application dated February 20, 2015 (Exhibit A Pages 1-3) the only vehicle she reported in the household was a [REDACTED] which she said was worth \$ [REDACTED] and was subject to a \$ [REDACTED] debt. It is curious how, in three weeks with no income and under the threat of utility shut-offs, she could move from a [REDACTED] [REDACTED] that had negative equity to a [REDACTED] that was worth what was owed on it.

BEM 212 (7/1/14) at page 1 states:

DEPARTMENT POLICY

Bridges will help determine who must be included in the Food Assistance Program (FAP) group prior to evaluating the non-financial and financial eligibility of everyone in the group.

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 does not define "live together" but it defines "living with" as follows:

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.

The policy also addresses the group composition if someone is temporarily out of the home.

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.

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.

Claimant testified that [REDACTED] would be gone to work in the oil fields and then he would come home to stay with her, do his laundry, and so on before he went back to the job site. The FEE investigation found that [REDACTED] has Claimant's home address listed as his address. The landlord's note was addressed to both Claimant and [REDACTED]. The utilities are in [REDACTED] name. Claimant admitted that [REDACTED] is receiving regular correspondence from the Unemployment Insurance Agency mailed to her home address. [REDACTED] former employer, [REDACTED], provided a copy of a job application on which [REDACTED] had given a home address that was Claimant's home address.

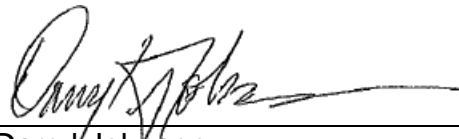
Claimant was not a credible witness. The burden is on the Department to prove, by a preponderance of the evidence, that it acted according to policy. The evidence supports a finding that both [REDACTED] and [REDACTED] are members of her household and their income was to be included in the group's income for purposes of determining the FAP allotment.

This is not the proper venue to determine whether Claimant committed an intentional program violation by failing to truthfully disclose household assets. The evidence is not sufficient in this record to know just when she originally submitted an application or redetermination in the FAP program that misstated group income and/or assets. The Department might wish to investigate that matter.

This is, however, the proper venue to determine whether the Department properly included [REDACTED] and [REDACTED] – and their income – in Claimant’s FAP 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 included the two men and their income in Claimant’s FAP group.

DECISION AND ORDER

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



Darryl Johnson
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Signed: **5/29/2015**

Date Mailed: **5/29/2015**

DJ/jaf

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:

