

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

IN THE MATTER OF:



MAHS Reg. No.: 15-020865
Issue No.: 3001
Agency Case No.: [REDACTED]
Hearing Date: January 06, 2016
County: WASHTENAW

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, telephone hearing was held on January 06, 2016, from Lansing, Michigan. Participants on behalf of Claimant included [REDACTED] [REDACTED] [REDACTED] (Eligibility Specialist) represented the Department of Health and Human Services (Department). Witnesses on behalf of the Department included [REDACTED] [REDACTED] (Regulation Agent with the Office of the Inspector General) and [REDACTED] [REDACTED] (Assistance Payments Supervisor).

ISSUE

Did the Department of Health and Human Services (Department) properly close the 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. The Claimant was an ongoing Food Assistance Program (FAP) recipient.
2. On October 7, 2015, the Department received the Claimant's application for Food Assistance Program (FAP) benefits.
3. The Department approved the Claimant for expedited Food Assistance Program (FAP) benefits effective October 8, 2015.
4. On October 15, 2015, the Department initiated a Front End Eligibility (FEE) investigation into the Claimant's eligibility for the Food Assistance Program (FAP) program.

5. The Claimant is living with another person, and the Claimant purchases and prepares food with this other person.
6. On November 5, 2015, the Department received the Claimant's request for a hearing protesting the closure of her Food Assistance Program (FAP) benefits.

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.

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons resides in an eligible living situation. Department of Human Services Bridges Eligibility Manual (BEM) 212 (July 1, 2015), 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, p3.

The phrase, purchase and prepare together, is meant to describe persons who usually share food in common. Persons usually share food in common if any of the following conditions exist:

- They each contribute to the purchase of food.
- They share the preparation of food, regardless of who paid for it.
- They eat from the same food supply, regardless of who paid for it. BEM 212, p5.

In general, persons who live together and purchase and prepare food together are members of the FAP group. Persons who normally purchase and prepare separately maintain that distinction even when they are temporarily sharing food with others. Persons who normally purchase and prepare separately maintain that distinction even when they are temporarily sharing food with others. BEM 212, 5-6.

In this case, the Department received the Claimant's application for FAP benefits on October 7, 2015, and her application was approved on an expedited basis. In order to accurately determine the Claimant's eligibility for benefits, the Department then initiated a Front End Eligibility (FEE) investigation. The results of this investigation were that the Claimant lives with an unrelated person whom she purchases and prepares food with.

It is not disputed that the Claimant is living with another person that she is not related to and therefore it is not mandatory that these people are placed in the same FAP benefit group. In general, under BEM 212, person who live together and purchase and prepare food together are members of the same FAP group.

In this case, the Department's investigator testified that he determined that the Claimant purchases and prepares food with another person in her home based on his interviews with the Claimant.

The Claimant testified that she would not have told the investigator that she purchases and prepares food with another person because she in fact does not. The Claimant also testified that she occasionally eats food in with the person living in her home.

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).

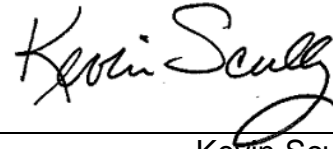
Based on the evidence and testimony available during the hearing, this Administrative Law Judge finds as a matter of fact that the Claimant purchases and prepares food along with another person that is living with her in her home. While it may not be every meal, this Administrative Law Judge finds that the Department was acting in accordance with BEM 212 when it determined the size and composition of the Claimant's benefit group.

It was not disputed that as a group of two, their combined income exceeds the gross income limit to receive FAP benefits. On October 23, 2015, the Department notified the Claimant that it would close her FAP benefits effective December 1, 2015.

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 closed the Claimant's Food Assistance Program (FAP) benefits.

DECISION AND ORDER

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



Kevin Scully
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: **1/8/2016**

KS/nr

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:

