

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Claimant

Reg. No.: 2008-24808

Issue No.: 1027

Case No.: [REDACTED]

Load No.: [REDACTED]

Hearing Date:

January 26, 2009

Oakland County [REDACTED]

ADMINISTRATIVE LAW JUDGE: Michael J. Bennane

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; MSA 16.409 and MCL 400.37; MSA 16.437 upon the Claimant's request for a hearing. After due notice a telephone hearing was held on January 26, 2009. The Claimant personally appeared and testified.

ISSUE

Did the Department properly deny the Claimant's Family Independence Program (FIP)?

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 deposited funds for her minor child under the Uniform Transfers to Minors Act in 1997.
2. On April 25, 2008, the Claimant applied for FIP.
3. On May 16, 2008, the Department notified the Claimant that her FIP application had been denied.

4. On May 28, 2008, the Claimant filed a request for a hearing.

#### CONCLUSIONS OF LAW

The Family Independence Program (FIP) was established pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 8 USC 601, et seq. The Department of Human Services (formerly known as the Family Independence Agency) administers the FIP program pursuant to MCL 400.10, et seq., and MAC R 400.3101-3131. The FIP program replaced the Aid to Dependent Children (ADC) program effective October 1, 1996. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

**In the instant case, documentation shows that the Claimant's FIP application because the Department determined that the FIP group had excess assets (???)** At hearing, it was agreed by both parties that the assets in question were transferred to the Claimant's son as part of the Uniform Transfers to Minors Act. The Department reads a portion of that Act as allowing the custodian to utilize the funds being held "for the benefit of minor" as meaning that the funds could be used to pay for normal costs of living.

Sec. 19 A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor without court order, without regard to the duty or ability of the custodian personally or any other person to support the minor, and without regard to other income or property of the minor that may be applicable or available for that purpose. MCL 554.533

This section also says "without regard to the duty or ability of the custodian personally or any other person to support the minor..." If the Department is correct then the custodian would obviously have to consider the duty or ability to support the minor and thus be in conflict with the act.

**FIP/SDA/AMP Trust Policy**

**FIP, SDA and AMP Only**

The Probate Court decides availability of the trusts it administers. A grantor must petition the Probate Court to make the principal available.

For other trusts, the principal is an available asset of the person who is legally able to:

Direct use of the principal for his needs.

Direct that ownership of the principal revert to himself. (PEM 400, pp. 15-16).

Here, neither type of control resides with the “custodian.” They have been transferred irrevocably, can only be used for the benefit of the minor beneficiary without regard to his or her being supported by the custodian, and the principle is not available for use for the needs of the custodian nor is the custodian able to have them revert to herself. The assets transferred under the Uniform Transfers to Minors Act (UTMA) should not have been included in any asset calculation for the Claimant.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, REVERSES and ORDERS the Department to reopen the Claimant’s case retroactive to the application date and recalculate the FIP without counting funds held under the UTMA in any calculation.

/s/ \_\_\_\_\_  
Michael J. Bennane  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: March 5, 2009

Date Mailed: March 9, 2009

**NOTICE:** Administrative Hearings may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. Administrative Hearings will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request.

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

MJB/jlg

cc:

