

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.: 2008-31640
Issue No.: 3002/5016/6019
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
December 11, 2008
Newaygo County DHS

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 December 11, 2008. The Claimant personally appeared and testified.

ISSUE

Did the Department fail to include the Claimant's children in his Food Assistance group and properly deny the Claimant's FAP, State Emergency Relief (SER) and Child Development and Care (CDC) applications?

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 Department failed to include the Claimant's children in his FAP group.
2. On August 13, 2008, the Department denied the Claimant's application for FAP.

2. On August 22, 2008, the Department denied the Claimant's application for SER.
(Department exhibit 16)
2. On August 30, 2008, the Department denied the Claimant's application for CDC.
3. On September 9, 2008, the Claimant filed a request for a hearing.

CONCLUSIONS OF LAW

The Child Development and Care program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (formerly known as the Family Independence Agency) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are contained in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The Food Assistance Program (FAP) (formerly known as the Food Stamp (FS) program) is established by the Food Stamp Act of 1977, as amended, and is implemented by the federal regulations contained in Title 7 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the FAP program pursuant to MCL 400.10, et seq., and MAC R 400.3001-3015. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, et seq., and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049 Department of

Human Services (formerly known as the Family Independence Agency) policies are found in the State Emergency Relief Manual (SER).

The Claimant's FAP benefits were denied based on his group size (one) and his income. The Department ran a FAP budget on June 16, 2008, and found the Claimant's income in excess of the maximum allowed.

The Claimant argued that since he has his children part time his group size should include them.

DETERMINING PRIMARY CARETAKER

When a child spends time with multiple caretakers who do not live together (e.g., joint physical custody or parent/grandparent), determine a primary caretaker. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). The child is **always** in the FAP group of the primary caretaker. If the child's parent(s) is living in the home, he/she must be included in the FAP group. (PEM212, p.3)

Here, the primary caretaker is the children's mother as documented by evidence presented at the hearing. The Children are not included in the Claimant's FAP group. The Department was correct in failing to include the Claimant's children in his FAP group.

CDC benefits were denied due to status of the proposed care provider.

ELIGIBLE PROVIDERS

In order for DHS to pay, care must be provided in Michigan by an eligible provider. Eligible providers are those regulated by DHS, Bureau of Children and Adult Licensing (BCAL), or enrolled by DHS. Those regulated by the BCAL are:

- Child care centers.
- Family child care homes
- Group child care homes

Day Care Aides/ Relative Care Providers

A **day care aide** (see PRG) is an individual (including a relative) who provides care in the home where the child lives (see PRG, In-Home Child Care).

A **relative care provider** (see PRG) is related to the child needing care by blood, marriage or adoption as a:

- Grandparent/step-grandparent
- Great-grandparent/step-great-grandparent
- Aunt/step-aunt
- Uncle/step-uncle
- Sibling/step-sibling (PEM 704, pp. 1-4)

Here, the care provider was neither a relative nor a licensed provider as required in the policy cited above. The Department was correct in denying payment to the Claimant's CDC provider.

Finally, the Claimant objects to the denial of a requested SER for assistance with utility bills.

The Claimant applied for assistance with his natural gas heating bill. The Department's limit for one year is \$350.00. (ERM, 301, p. 7) The Department provided evidence that he had already reached this limit.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, AFFIRMS the Department's actions in the instant case.

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

Date Signed: March 12, 2009

Date Mailed: March 12, 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

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