

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.: 2009-14992
Issue No.: 1022/2018/3014
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
April 1, 2009
Bay County DHS

ADMINISTRATIVE LAW JUDGE: Michael J. Benmane

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 April 1, 2009. The claimant personally appeared and testified.

ISSUE

Did the Department properly close the claimant's Food Assistance (FAP) and Medical Assistance (MA), and 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 was a FIP, MA, and FAP recipient. The group size is four (4).
2. On February 3, 2009, the department received a copy of a Uniform Child Support Order dated October 7, 2008. The order reflects an order for joint physical custody except that the document states a "parental-time offset" showing 183 overnights with [REDACTED]

██████████r and 182 overnights with the claimant. Also received on the same date was a letter from ██████████ requesting that the department add the children to her benefit group. (Department exhibit 5-6)

3. As a result, on February 3, 2009, the department closed the claimant's FIP and MA and removed the claimant's children from the claimant's FAP.
4. On February 17, 2009, the department received a Referee Recommendation and Temporary Order dated December 6, 2005. The temporary order clearly shows that the intent of the court was to assign joint physical custody. (Department exhibit 4)
5. On February 27, 2009, the Claimant filed a request for a hearing.

CONCLUSIONS OF LAW

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 Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

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).

Here, the Department relies on a copy of a Uniform Child Support Order Modification to remove the claimant's children from his FAP, FIP and MA groups respectively. The order reflects a previous referee temporary order that assigns legal and physical custody to "both parents."

The court, grappling with the inability to divide one "overnight" in half, assigns one extra day to the mother. In fact, the claimant produced a letter addressed to him from the [REDACTED] [REDACTED] stating that the reason that the court divided the year 182 days for the claimant vs. 183 days for the children's mother was because their "computer system will not allow the court to input 182.5 overnights per year." per parent.

However, at the hearing the claimant testified that his children stayed with him 210 days last year; and continues to spend overnights with him to a greater degree than they do with their mother.

Caretaking Time Shared Equally

If the child sleeps in the home of multiple caretakers an equal number of days in a month, when averaged over a twelve-

month period, e.g. every other week, the caretaker who applies and is determined eligible first is the Primary Caretaker for that program. In this situation, it is possible to have a different Primary Caretaker for different programs. (PEM 210, ppp.5-6).

This ALJ finds that the children do in fact reside with the claimant a majority of the time regardless of the support order modification. In addition the claimant was already receiving FIP, FAP and MA before the application of the mother.

The **Primary Caretaker** is the individual who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half the days in a month, when averaged over a twelve-month period. The twelve-month period begins at the time the determination is being made. (PEM 210, p.5).

Therefore the department erred in removing the children from the claimant's FIP, FAP, and MA.

The circuit court is obviously unaware of the ramifications of its decision to place one more day of "overnights" with one parent or the other. Of course the claimant and the child's mother could solve the problem created by the court by simply agreeing to have one child officially listed with one parent and the other child with the other parent, or simply agreeing to equally share the benefits given to one parent.

This issue of primary caretaker continues to present problems when a court grants joint physical custody to both parents. This type of custody is becoming more prevalent. It would behoove the department to explore a division of benefits where the custody is evenly divided and it is documented in a court order.

DECISION AND ORDER

The Administrative Law Judge based on the above findings of fact and conclusions of law, REVERSES AND ORDERS the Department to reassign the claimant's children to his FAP, FIP and MA groups and replacing any lost benefits if applicable.

/s/

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

Date Signed: 04/30/09

Date Mailed: 05/01/09

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 60 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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