

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: 2009-17946

Issue No: 2015

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

October 22, 2009

Monroe County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon claimant's request for a hearing. After due notice, a telephone hearing was held on Thursday, October 22, 2009. The claimant was not present, but was represented by his authorized representative, [REDACTED]

ISSUE

Did the department correctly determine that the claimant was not eligible for Group II Medicaid (MA) under the Caretaker-Relative policy?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

- (1) On January 13, 2009, [REDACTED] applied for retroactive MA benefits for the claimant. (Department Exhibit 5-20)
- (2) The case was registered for Adult Medical Program (AMP) because the claimant had no children and was not disabled.
- (3) On January 21, 2009, the AMP program was not accepting new applicants and the claimant's application was denied. (Department Exhibit 3-4)
- (4) On February 23, 2009, the department received a hearing request from [REDACTED] stating that the claimant had not been considered under the Group II MA Caretaker Relative policy.
- (5) During the hearing, this Administrative Law Judge notes the following:
 - On page three of the application that the claimant listed he was a non-parent caregiver. (Department Exhibit 7)
 - On page five of the application the claimant stated that his relationship to the child in the home was as a stepdaughter because he is married to the mother. (Department Exhibit 9)

CONCLUSIONS OF LAW

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 (DHS or department) 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 department manuals provide the following relevant policy statements and instructions for caseworkers:

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.

Exception: If otherwise eligible, the Absent Caretaker may receive FAP benefits for the child, when the child is visiting the Absent Caretaker for more than 30 days (i.e., not temporarily absent from the Primary Caretaker's home).

Determine a Primary Caretaker by using a twelve-month period. The twelve-month period begins when a Primary Caretaker determination is made. To determine the Primary Caretaker:

- . Ask the client how many days the child sleeps at his/her home in a calendar month.
- . Accept the client's statement unless questionable or disputed by another caretaker.

Note: When a caretaker works during a child's normal sleep hours, include the nights the child sleeps away from home when due solely to the caretaker's employment as nights slept in the home of the caretaker. See Example 3.

- . If Primary Caretaker status is questionable or disputed, verification is needed.
- . Allow both caretakers to provide evidence supporting his/her claim.
- . Base your determination on the evidence provided by the caretakers. See "Verification Sources."
- . Document who the Primary Caretaker is, in the case record.

If the child spends virtually half of the days in each month, averaged over a twelve-month period with each caretaker, the caretaker who applies and is found eligible first, is the Primary Caretaker. The other caretaker(s) is considered the Absent Caretaker(s). PEM, Item 212, p. 3.

MA GROUP COMPOSITION

DEPARTMENT POLICY

LIF

Group composition policy for Low-Income Families (LIF) is in PEM 110. Do not use the policy in this item to determine group composition for LIF. PEM, Item 211, p. 1.

Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA

Use fiscal groups and, for SSI-related MA, Group 2 Persons Under Age 21 and Group 2 Caretaker Relative, asset groups to determine the financial eligibility of a person who requests MA and meets all the non-financial eligibility factors for an MA category.

Individual family members may be eligible under different MA categories. You must explore all categories for each person who requests MA. See “CHOICE OF CATEGORY” in PEM 105. PEM 211, p. 1.

DEFINITIONS

Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA

‘**Child**’ means an unmarried person under age 18.

‘**Adult**’ means a person who is married or age 18 or older. PEM, Item 211, p. 1.

RULES FOR GROUPS

Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA

Determine the fiscal and asset groups separately for each person requesting MA. When referring to the group listings, remember:

- Only persons living with one another can be in the same group. See **“LIVING WITH”**
- Certain persons cannot be fiscal or asset group members in SSI-related MA. See **“EXCLUDED PERSONS”**.
- There is NO asset test for Group 2 FIP-related MA and the Healthy Kids categories.

- . **For all Group 2 FIP-related MA and Healthy Kids categories**, when a child lives with both parents who do not live with each other (e.g., child lives with his mother two weeks each month and his father the other two weeks), only one parent, the primary caretaker, is in the fiscal group. You must determine a **primary caretaker**. The primary caretaker is the parent 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. Vacations and visitations with the absent parent do not interrupt primary caretaker status. See rules in PEM 255 concerning support from the other parent. See "Verification Sources" in this item:
 - .. Joint physical custody occurs when parents alternate taking responsibility for the child's day-to-day care and supervision. It may be included in a court order or may be an informal arrangement between parents. A child is considered to be living with only one parent in a joint custody arrangement. This **parent is the primary caretaker**.
- . **For all Group 2 FIP-related MA and Healthy Kids categories**, count a pregnant woman as at least two members. If twins **are verified**, count the woman as three, etc.
- . **For PEM, Item 125 and 126 categories only**, continue to count the woman as two (or three, etc.) for two calendar months following her pregnancy termination for each unborn not resulting in a live birth. PEM, Item 211, pp. 1-2.

LIVING WITH

Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA

Living with others means sharing a home where family members usually sleep, **except** for temporary absences. A temporarily absent person is considered in the home. PEM, Item 211, p. 2.

**DEPARTMENT
POLICY**

MA Only

This is a FIP-related Group 2 MA category.

MA is available to parents and other caretaker relatives who meet the eligibility factors in this item. All eligibility factors must be met in the calendar month being tested. If the month being tested is an L/H month and eligibility exists, go to BEM 546 to determine the post-eligibility patient-pay amount.

**NONFINANCIAL
ELIGIBILITY
FACTORS**

A caretaker relative is a person who meets all of the following requirements:

- Except for temporary absences, the person lives with a dependent child. Use “CARETAKER RELATIVE NONFINANCIAL TEMPORARY ABSENCE” below. Dependent child is defined later in this item.
- The person is:
 - The parent of the dependent child; **or**
 - The specified relative (other than a parent) who acts as parent for the dependent child. Specified relative is defined later in this item. Acts as parent means provides physical care and/or supervision.
- The person is not participating in a strike; and, if the person lives with his spouse, the spouse is not participating in a strike. Use the FIP striker policy in BEM 227.
- The **MA** eligibility factors in the following items must be met.
 - BEM 220, Residence.
 - BEM 221, Identity.
 - BEM 223, Social Security Numbers.
 - BEM 225, Citizenship/Alien Status.

- BEM 255, Child Support.
- BEM 256, Spousal/Parental Support.
- BEM 257, Third Party Resource Liability.
- BEM 265, Institutional Status.
- BEM 270, Pursuit of Benefits.

When a dependent child lives with both parents, both parents may be caretaker relatives.

Occasionally, a specified relative (other than a parent) who claims to act as parent for the dependent child and the child's parent both live with the child. The client's statement regarding who acts as parent must be accepted. If both the parent and other specified relative claim to act as parent, assume the parent is the caretaker relative. When only the other specified relative claims to act as parent, both the other specified relative and the parent(s) may be caretaker relatives.

Except as explained in the two preceding paragraphs, a child can have only one caretaker relative. This means that if a person is an MA applicant or recipient based on being a caretaker relative, no other person can apply for or receive MA based on being a caretaker relative for the same dependent child.

**SPECIFIED
RELATIVE DEFINED**

A specified relative is any of the following:

- Parent.
- Aunt or uncle.
- Niece or nephew.
- Any of the above relationships prefixed by grand, great or great-great.
- Stepparent.
- Sister or brother.
- Stepsister or stepbrother.
- First cousin.

- First cousin once removed (i.e., a first cousin's child).
- The spouse of any person above, **even** after marriage is ended by death or divorce.

The above includes relationships established by adoption.

Note: Termination of **parental rights** is a court order that ends a parent's rights and responsibilities to the child.

A person whose parental rights are terminated by a court is not a specified relative. The child's relationships to **other** specified relatives are not affected.

VERIFICATION REQUIREMENTS

The client's statements regarding relationship, primary caretaker, presence in the home and school attendance for the dependent child(ren) may be accepted. Verification is required only if the client's statements are inadequate or inconsistent with other information. Verification requirements for all other eligibility factors are in the appropriate manual items.

Verification Sources

Relationship

- Birth certificate.
- Hospital certificate of birth.
- Official records containing relationship information.
Examples: court, school, church or medical records; marriage certificate; insurance policy.
- Newspaper account containing relationship information.
- Written statements by at least two persons with direct knowledge of the relationship.

Presence in the Home

- Home call.
- Written statements by at least two persons who do not live with the group but have direct knowledge of the living arrangement.
- School contact confirming where and with whom the child lives. DHS-3380, School Enrollment Verification, may be used.
- Court, medical or other official records confirming the child's presence in the home.
- Written statement from the landlord **if** he has direct knowledge of the living arrangement.

Primary Caretaker:

- School records indicating who enrolled the child in school, first person called in an emergency, who arranges for the child's transportation to and from school.
- Day care records showing who makes and pays for the day care arrangements and who drops off and picks up the child.
- Medical records showing where the child lives and who generally takes the child to medical appointments.

In the instant case, [REDACTED], submitted an application on behalf of the claimant on January 13, 2009. The application requested MA and stated that the claimant was a non-parent caretaker. The department reviewed the claimant for AMP, which was denied because AMP was not accepting new applications. However, the department did not consider the claimant for Group II MA Caretaker-Relative policy even though [REDACTED] contacted the department and stated that they were applying for Group II MA Caretaker-Relative benefits because the claimant is married to the mother of the children in the household where the mother/claimant's wife is working everyday and the claimant is unemployed and taking care of the children. There was a

written note on the e-mail that the mother has to say she is not acting as a parent of her caretaker, but no verification was requested by the department. If additional information was required to determine Group II MA Caretaker-Relative eligibility, the department should have requested that information through a Verification Checklist to the claimant and his authorized representative.

Therefore, the department has not established that it was acting in compliance with department policy by determining that the claimant was not eligible for to be considered for Group II MA Caretaker-Relative benefits because he has no children.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not appropriately deny the claimant's January 13, 2009 MA application without considering the claimant for Group II MA Caretaker-Relative benefits.

Accordingly, the department's decision is **REVERSED**. The department is ordered to reprocess the claimant's January 13, 2009 application with retroactive benefits and consider the claimant for Group II MA Caretaker-Relative benefits.

/s/ _____
Carmen G. Fahie
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: November 19, 2009

Date Mailed: November 20, 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 mailing 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.

CGF/vmc

cc:

A large black rectangular redaction box covers the names of the recipients listed in the 'cc:' field.