

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.: 2009-27355
2009-29589

Issue No.: 2015-3014-3020

Case No.:

Load No.:

[REDACTED]

Hearing Date:
October 1, 2009
Oakland County DHS (03)

ADMINISTRATIVE LAW JUDGE: Linda Steadley Schwarb

AMENDED
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 hearing was held on October 1, 2009. The claimant appeared and testified.

ISSUE

Did the Department of Human Services (DHS or department) properly terminate the Medical Assistance (MA) provided to claimant's children and remove claimant's children from claimant's Food Assistance Program (FAP) group because claimant's children did not live with claimant?

FINDINGS OF FACT

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

- 1) Claimant's custody rights to his children were suspended in 2004. At all times relevant to this matter, claimant's parenting time has been suspended.
- 2) Claimant lost his job and was no longer able to provide his children with medical coverage.
- 3) On March 19, 2009, claimant applied for FAP and MA for himself and his two minor children.
- 4) Thereafter, the department provided claimant's children with MA (with claimant as the grantee) and provided the three-person FAP group with \$201.00 per month in FAP benefits effective April 1, 2009.
- 5) Thereafter, the department learned that claimant's children resided with their mother who had sole legal and physical custody of the children.
- 6) On May 29, 2009, the department notified claimant that, effective June 10, 2009, the MA coverage for the minor children would be cancelled and the group's FAP benefits would be reduced to \$16.00 per month because claimant's children did not live with claimant.
- 7) On June 8, 2009, claimant filed a hearing request to protest the department's determination.
- 8) On June 1, 2009, the department notified claimant that, as a result of client error, claimant had been over-issued \$555.00 in FAP benefits from the period of April of 2009 through June of 2009 and that the department intended to recoup the over-issuance.
- 9) On June 8, 2009, claimant filed a hearing request to protest the department's proposed recoupment action.

- 10) At the hearing, claimant acknowledged that he does not have physical custody of his children and that his parenting time has been suspended.
- 11) At the hearing, the department agreed to initiate recalculation of claimant's FAP over-issuance for the months of April, May, and June of 2009 in order to take into account the amount of child support paid by claimant.
- 12) Claimant agreed with the department's plan of action with regard to the FAP recoupment issue.

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).

Relevant policy with regard to the MA issue is as follows:

MA Group Composition

Only persons living with one another can be in the same group.
PEM Item 211.

Living with others means sharing a home where family members usually sleep, **except** for temporary absences. PEM Item 211, Page 2.

A dependent child can be temporarily absent from only one home. When a child spends time with two parents who do not live together, you must determine a primary caretaker. PEM Item 211, Page 3.

Verification Sources ... Primary Caretaker:

- Court order that addresses custody or visitation.
- School records indicating who enrolled the child and who is called in an emergency situation.
- Medical records stating where the child lives, who is responsible for the child's medical care.

PEM Item 211, Page 6.

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 (DHS or department) 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).

Relevant policy with regard to FAP benefits is as follows:

Food Assistance Program Group Composition

You must determine who is included in the Food Assistance Program (FAP) group prior to evaluating the non-financial and financial eligibility of everyone in the group.

To establish FAP group composition determine:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately, and
4. Whether the person(s) reside in an eligible living situation.

PEM Item 212, Page 1.

The primary caretaker is the person who is primarily responsible for the child's day-to-day care and supervision in the home where the child sleeps more than half of the days in a calendar month, on average, in a twelve-month period. PEM Item 212, Page 1.

When primary caretaker status is questionable or disputed, base the determination on the evidence provided by the caretakers ...

Suggested verification include:

- Most recent court order that addresses custody and/or visitation,
- School records indicating who enrolled the child in school, first person contacted in case of an emergency, and/or who arranges for child's transportation to and from school.

PEM 212, Page 10.

Also see 7 CFR 273.1.

In this matter, claimant acknowledged that he does not have custody of his children and that his parenting time has been suspended. Thus, per policy, claimant's children may not be a part of claimant's FAP group and claimant's children may not receive MA with claimant as the grantee. Since the department followed policy in its decisions in this matter, the department must be affirmed.

With regard to the recoupment action, the parties reached an accord. The department agreed to initiate recalculation of claimant's FAP over-issuance for the months of April, May, and June of 2009 in order to take into account the amount that claimant paid for child support. The department agreed to provide claimant with written notice of its determination. Claimant indicated satisfaction with the department plan of action.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department of Human Services properly terminated the Medical Assistance provided to claimant's children and removed claimant's children from claimant's Food Assistance Program group because the children do not live with claimant. Thus, in this matter, the department must be affirmed.

With regard to the recoupment of over-issued Food Assistance Program benefits for April, May, and June of 2009, the department shall initiate recalculation of the over-issuance amount in order to take into account the amount that claimant paid for child support. The department shall notify claimant of its determination in writing.

Linda Steadley Schwarz
Linda Steadley Schwarz
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: January 22, 2010

Date Mailed: January 26, 2010

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.

LSS/pf

cc:

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