

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: 2009-32984
Issue No: 2024; 3025
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 16, 2009
Kent County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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 September 16, 2009. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly determine that the claimant's children were residing with their father beginning in July, 2009 for purposes of the Food Assistance Program (FAP) and Medical Assistance (MA)?

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 June 11, 2009, the Kent County caseworker received an email from a Dickinson County caseworker that indicated the two children were residing with their father in

Dickinson County for the summer (from the end of May until approximately August 4, 2009) and that he was requesting FAP and MA benefits for the children. (Department Exhibit 3).

2. On August 4, 2009, the claimant submitted a letter to the department indicating that the children were back in her custody on July 26, 2009, and would continue to reside with her throughout the school year. (Department Exhibit 2).

3. On August 12, 2009, the claimant re-applied for FAP and MA benefits for her household, including the two children.

4. On September 15, 2009, the Kent County caseworker spoke via telephone with the children's father, [REDACTED], who indicated that the children had returned to their mother's custody on July 28, 2009.

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 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).

Department policy states:

FOOD ASSISTANCE PROGRAM GROUP COMPOSITION

DEPARTMENT POLICY

You must determine who is included in the Food Assistance Program (FAP) group prior to evaluating the nonfinancial 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) resides in an eligible living situation. (See “LIVING SITUATIONS” in this item.)

PEM, Item 212, p. 1.

RELATIONSHIPS

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. First determine if they **must** be included in the group. If they are **not** mandatory group members, then determine if they purchase and prepare food together or separately. PEM, Item 212, p. 1.

Spouses

Spouses who are legally married and live together **must** be in the same group. PEM, Item 212, p. 1.

Parents and Children

Children include natural, step and adopted children.

Parents and their children **under 22 years of age** who live together **must** be in the same group regardless of whether the child has his/her own spouse or child who lives with the group. PEM, Item 212, p. 1.

Primary Caretaker

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, p. 1.

Caretaker

A caretaker is a related or unrelated person who provides care or supervision to a child(ren) **under 18** who lives with the caretaker but who is **not** a natural, step or adopted child. This policy does **not** apply to foster children (see below). A person acting as a parent and the child(ren) for whom he acts as a parent who live with him **must** be in the same group. PEM, Item 212, p. 1.

LIVING WITH

Living with means sharing a home where family members usually sleep and share **any** common living quarters such as a kitchen, bathroom, bedroom or living room. Persons who share **only** an access area (e.g., entrance or hallway) or non-living area (e.g., laundry) are **not** considered living together.

See PEM 617 for policy regarding persons in other group living situations. PEM, Item 212, p. 2.

Temporary Absence

A person who is temporarily absent from the group is considered living with the group.

A person's absence is temporary if:

- . his location is known; **and**
- . he lived with the group before his absence (newborns are considered to have lived with the group); **and**
- . there is a definite plan for his return; **and**

- . the absence has lasted or is expected to last 30 days or less.

Exception 1: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home. PEM, Item 212, p. 2.

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.

Changes in Primary Caretaker

Re-evaluate Primary Caretaker status when:

- . a new or revised court order changing custody or visitation is provided, **or**
- . there is a change in the number of days the child sleeps in another caretaker's home and the change is expected to continue, on average, for the next twelve months; **or**
- . a second caretaker disputes the first caretaker's claim that the child(ren) sleeps in his/her home more than half the nights in a month, when averaged over the next 12 months, **or**
- . a second caretaker applies for assistance for the same child. PEM, Item 212, p. 4.

Member Adds/Deletes

A member add that increases benefits is effective the month after it is reported or, if the new member left another group, the month after the member delete. In determining the potential FAP benefit increase, assume the FIP/SDA supplement and new grant amount have been authorized.

When a member leaves a group to apply on his own or to join another group, do a member delete in the month you learn of the application/member add. Initiate recoupment if necessary. If the member delete decreases benefits, use adequate notice for the negative action. PEM, Item 212, p. 7.

Persons Who Have Already Received FAP Benefits

A person must not participate as a member of more than one FAP group in any given month. (See PEM 222)

Exception: Residents of shelters for battered women and children.
(See PEM 617)

If a person is a mandatory group member, action must be taken as soon as possible to remove him from his former group and add him to the new group. PEM, Item 212, p. 8.

In this case, the mother is the primary caretaker, as she has the children the majority of the time. However, due to the distance between the parents, the father of the children had custody of the children from the end of May through the end of July. The children's father applied for benefits in Dickinson County for the children. The department removed the children from the claimant's case in Kent County and added them to the father's case in Dickinson County in July.

Department policy indicates that children should be on the primary caretaker's FAP group, unless absent for more than a temporary period of time. PEM 212. A temporary period of time is defined as 30 days or less. PEM 212. Department policy also dictates that the primary caretaker status shall be reviewed when a second caretaker applies for assistance for the same child. PEM 212. Therefore, when the children's father applied for assistance, the department was required to review the primary custody status. The information provided by the father to the department was that he was going to have the children from the end of May until August 4, 2009.

In this case, the children were going to be with their father for more than 30 days, which did allow him to receive FAP and MA benefits for the children. Thus, the department properly removed the children from the claimant's case and placed them on the father's case.

There is a slight discrepancy in the dates reported that the children were returned to their mother's custody. The claimant testified that it was July 26, 2009. The father of the children informed the caseworker in the September 15, 2009, telephone conversation that it was July 28, 2009. However, this is not a significant difference and causes no issues in the handling

of the case. Department policy indicates that an individual can not be on two different FAP groups for any given month. PEM 222. Thus, the children will need to be removed from their father's case and put back on their mother's case. The claimant did reapply for benefits on August 12, 2009, for herself and the children. The department testified that they are currently processing that application and have all the information necessary to remove the children from the father's case and place them back on the claimant's case. The department further testified that this would be done upon the completion of the processing of the claimant's August application.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined the claimant's children were more than temporarily absent from the claimant's custody and properly determined the children should be added to the father's FAP and MA case. It is also noted that the department is properly in the process of returning the children to the mother's FAP and MA case. Thus, the department's actions are UPHELD. SO ORDERED.

/s/ _____
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: September 22, 2009

Date Mailed: September 23, 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.

SLK 

cc:

