

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: 2009-16150
Issue No: 1021; 2018; 3014
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 14, 2009
Mackinac 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 May 14, 2009. The claimant personally appeared and provided testimony.

ISSUES

- (1) Did the department properly deny the claimant's application for Medical Assistance (MA) or the Adult Medical Program (AMP) in December, 2008?
- (2) Did the department properly determine the claimant's ex-wife had custody of the children more than 50% of the time and deny the claimant's Family Independence Program (FIP) and remove the children from the claimant's Food Assistance Program (FAP) case in March, 2009?

FINDINGS OF FACT

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

1. The claimant applied for the AMP benefits on November 26, 2008, and was denied on December 16, 2008, because the AMP program had a freeze on enrollments (Department Exhibit #5).

2. The claimant applied for FIP benefits on January 29, 2009 (Department Exhibit #37 – 51).

3. On February 3, 2009, the department mailed the claimant a Verification Checklist (DHS-3503) requesting a current court order showing the custody arrangement for the children (Department Exhibit #31).

4. In response to the verification request, the claimant provided an “order amending parenting time and other matters” to the department. The order indicates that during the school year, the mother has the children from Wednesday at 6:00 pm through Sunday at 6:00 pm and the father has the children from Sunday at 6:00 pm through Wednesday at 6:00 pm. During the summer break, the children alternate between the two parents week to week (Department Exhibit #1 – 2).

5. The claimant has an order to pay child support to his ex-wife in the amount of \$45.00 monthly (Department Exhibit #7, 14, 65).

6. On March 3, 2009, the department mailed the claimant an Application Eligibility Notice (DHS-1150) that indicated the claimant’s application for FIP was denied as the department found the children were not with the claimant more than 50% of the time (Department Exhibit #86).

7. On March 17, 2009 the department removed the children from the claimant’s FAP case (Department Exhibit #98).

8. The department completed a FAP budget for the claimant, effective April, 2009 that removed the children from the FAP case. The budget showed no income for the claimant, a

\$45.00 child support expense, a \$500.00 rent expense, and a \$550.00 heat/utility standard expense. The claimant was authorized for \$176.00 in monthly FAP benefit (Department Exhibit #94). The claimant was provided notice of this change on March 3, 2009 (Department Exhibit #95).

9. The claimant submitted a hearing request on March 9, 2009 (Department Exhibit #101).

CONCLUSIONS OF LAW

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 (DHS or department) 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).

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:

The AHR, or if none, the client has 90 calendar days from the date of the written notice of case action to request a hearing. PAM, Item 600, p. 4.

A claimant shall be provided 90 days from the mailing of the notice in R 400.902 to request a hearing. R 400.904(4).

The claimant shall be provided reasonable time, not to exceed 90 days, in which to appeal a department action. 45 CFR 205.10.

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.

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.

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.

FIP GROUP COMPOSITION

DEPARTMENT POLICY

FIP

Group composition is the determination of which persons living together are included in the FIP program group and the eligible group. To be eligible for FIP, a child must live with a caretaker.

Primary Caretaker

The **Primary Caretaker** is the caretaker 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 month, when averaged over a twelve-month period. The twelve-month period begins at the time the determination is being made.

Absent Caretaker

Once you have determined who is the Primary Caretaker, the child's other caretakers are considered **Absent Caretakers**.

Joint Physical Custody

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 the parents. PEM, Item 210, pp. 1-2.

Determining Primary Caretaker

When a child has multiple caretakers who do not live together (e.g., joint physical custody or parent/grandparent), determine who is the 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 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.

Once you have determined who is the Primary Caretaker, the child's other caretakers are considered Absent Caretakers.

Note: Vacations and/or visitations with an Absent Caretaker do not change the result of the Primary Caretaker determination. However, when a child is continuously absent from or expected to be continuously absent from the home of the Primary Caretaker for more than 30 consecutive days, (i.e., does not meet the definition of temporary absence), remove the child's need from the FIP case.

Only the Primary Caretaker can receive FIP for a child. PEM, Item 210, p. 4.

In order for the claimant to be eligible for MA, FIP and to have the children on his FAP case, department policy requires the claimant to be the primary caretaker of the children, or have them more than 50% of the time. PEM 210, 212. The claimant provided a copy of the original court order on parenting time and the amended order on parenting time to the department and this Administrative Law Judge. The original court order provided (in pertinent part) that the claimant and his ex-wife would alternate holidays and spring break each year, and share Christmas break. During the school year, the mother has the children from Wednesday at 6:00 pm through Sunday at 6:00 pm and the father has the children from Sunday at 6:00 pm through Wednesday at 6:00 pm. This schedule remained in effect with the amended order. The amended order clarifies that during the summer break of school, the children shall alternate between the father and the mother on a weekly basis.

Because the holidays are alternated each year and the claimant and his ex-wife split custody of the children evenly in the summer, the deciding factor in time spent with each parent is the regular weekly schedule. The regular weekly schedule is four nights with the mother and three nights with the father. Therefore, the mother has the children more than 50% of the time. The claimant argues that he has the children all of spring break, so it makes up for some of the time the mother has them more. However, as noted previously, the claimant and his ex-wife alternate spring break each year, so next year the claimant's ex-wife will have the children during spring break. Therefore, that is not a decisive factor.

It is also noted for the primary caretaker status, that the claimant pays the children's mother child support. This would show that the mother has the children more than 50% of the time as, if she did not, the claimant would not be paying child support.

Department policy states that only the primary caretaker can receive FIP for a child. PEM 210. Therefore, the claimant was not eligible for FIP benefits and the department properly denied his application.

Department policy also requires the claimant to be the primary caretaker of the children to be able to have them included in his FAP group. Policy states only one person can be the primary caretaker and the other caretaker is considered the absent caretaker. The children are **always** in the FAP group of the primary caretaker. PEM 212. The only exception is if the children are visiting the absent caretaker for more than 30 days, then the absent caretaker can receive FAP benefits for the children. This exception does not apply to this case. Thus, the department properly determined that the children should not be included in the claimant's FAP group and removed them from the FAP case.

The claimant also indicates in his hearing request that he should be eligible for MA benefits. The claimant applied for AMP benefits on November 26, 2008, and was denied on December 16, 2008, because the AMP program had a freeze on enrollments. The claimant would not qualify for any MA programs unless he was determined to be the primary caretaker of the children. He does not qualify on the basis of disability. Thus, AMP would be the only program he would qualify for, as he was not determined to be the primary caretaker of the children. It is also noted that the mother does have an active MA case for the children. This Administrative Law Judge points out that the claimant can reapply for AMP benefits when there is no enrollment freeze in effect.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined that the claimant's ex-wife is the children's primary caretaker, having the children more than 50% of the time. The department properly denied the claimant's FIP application and properly removed the children from the claimant's FAP case in March, 2009. The department also properly determined that the claimant was not eligible for MA benefits.

Accordingly, the department's action is UPHELD. SO ORDERED.

/s/

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

Date Signed: May 27, 2009

Date Mailed: May 29, 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 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.

SLK [REDACTED]

cc:

[REDACTED]