

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: 200929019
Issue No: 3014
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
August 5, 2009
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 August 5, 2009.

ISSUE

Were the claimant's children correctly removed from his FAP case?

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 was receiving a Food Assistance Program (FAP) allotment budget in Genesee County.
- (2) Claimant listed on his assistance application of February 9, 2009 that both of his daughters were living in his household at least 50% of the time.

- (3) Claimant's only applied for FAP benefits for [REDACTED] on this application, because he had joint custody with the children's mother.
- (4) The children's mother applied for benefits for both children on June 1, 2009.
- (5) The mother's caseworker requested that the claimant's caseworker remove the children from claimant's FAP case in order to add them to the mother's case.
- (6) Claimant's mother provided a letter from the school which allegedly showed that children were living in the mother's home more than 50% of the time.
- (7) Claimant was not given a chance to rebut this evidence.
- (8) Claimant's children were removed from his FAP assistance case and his FAP benefits were lowered accordingly on July 1, 2009.
- (9) Claimant filed for hearing on June 22, 2009, alleging that DHS should not have removed his children from his case.
- (10) Claimant was represented at hearing by [REDACTED] in Flint, Michigan.

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 (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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

The relationships of the people who live together affects whether they must be included or excluded from the group. Parents and their children under 22 years of age who live together must be in the same group. BEM 212.

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. BEM 212. When a child spends time with multiple caretakers who do not live together—for example, cases of joint physical custody—a primary caretaker must be determined. BEM 212.

Only one person can be the primary caretaker and the other caretaker is considered the absent caretaker, even if the absent caretaker cares for the child an equal amount of time. A child must always be in the FAP group of the primary caretaker. BEM 212.

The primary caretaker is determined by using a twelve month period. The twelve month period begins when a primary caretaker determination is made. The case worker should ask the client how many days the child sleeps at his/her home in a calendar month. BEM 212. This statement should be accepted without verification unless questionable or disputed by another caretaker.

However, if primary caretaker status is questionable or disputed, verification is needed. BEM 212. In the case of disputes, both caretakers must be afforded a chance to provide evidence supporting his/her claim. BEM 212. A determination must be made on the evidence provided by the caretakers.

Cases involving joint physical custody often see the child in each parent's home exactly half of the time. In these cases, 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. BEM 212. The other caretaker is considered the absent caretaker, even though they care for the child for an equal amount of time. BEM 212.

Primary caretaker status is re-evaluated when a new or revised court order changing custody or visitation is provided, 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 sleeps in his/her home more than half the nights in a month, when averaged over the next 12 months. Primary caretaker status is also re-evaluated when a second caretaker applies for assistance for the same child. BEM 212.

When primary caretaker status is re-evaluated, and becomes questionable or disputed, the final determination is based on the evidence provided by the caretakers. As stated, each caretaker must be given the opportunity to provide evidence supporting his/her claim. BEM 212. These verifications can include the 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 emergency, and/or who arranges for child's transportation to and from school, child care records showing who makes and pays for child care arrangements, and who drops off and picks up the child, or medical provider's records showing where the child lives and who generally takes the child to medical appointments. BEM 212.

Claimant argues that the Department should not have removed his children from his FAP case. The Department admitted that they removed the children from the case in response to the children's mother providing evidence that the children resided in her home. However, the Department admitted that they did not give the claimant a chance to provide rebuttal evidence before this case change was made.

This was clear error. BEM 212 states in two different places that in the case of a disputed caretaker claim, each side must be given a chance to provide evidence before a final determination is made as to who the primary caretaker is. Claimant was not afforded that chance. When a second caretaker claims the children on a benefit case, the caretaker status is considered disputed and a determination must be made, after examining all evidence. The Department erred by only considering evidence from the children's mother, and ignoring the claim from the claimant. This is a direct violation of BEM 212, and requires reversal.

Furthermore, claimant has presented overwhelming evidence that that the children are in his care at least 50% of the time. Claimant has presented several medical bills which show the children's address as the claimant's address. Claimant has submitted a lease which lists the children as residents. Finally, claimant has submitted a final order of divorce, which awards claimant joint custody of the children. This divorce order shows that the claimant has custody of the children 50% of the time.

While the mother did present a letter from the school showing that the children list the mother's address for educational purposes, this letter only adds to claimant's contention that there is joint custody of the children, and both his and the mother's addresses are used for different items in order to provide stability for the children. Furthermore, this letter from the school is not sufficient to overcome the evidence of the official order of divorce shows that the claimant has custody of the children 50% of the time.

BEM 212 states that in cases where a client can show that they have custody of the children exactly 50% of the time, the client who requests assistance benefits first shall be determined to be the primary caretaker. In the current case, claimant applied for benefits in February, 2009. The children's mother applied for benefits in June, 2009. The evidence in the

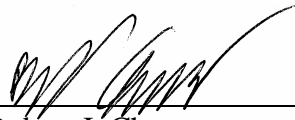
case, including the divorce degree, the school letters, the medical records and the lease all greatly support claimant's testimony that he has custody of the children 50% of the time. Therefore, as claimant applied for benefits before the children's mother, and there exists overwhelming evidence that he has cares for the children 50% of the time, claimant is entitled to claim both children on the case. The mother is not entitled to claim the children, and the Department erred when it moved the children over to the mother's case. For that reason, the action of the Department must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department's decision to designate the children's mother as primary caretaker was incorrect.

Accordingly, the Department's decision is REVERSED.

The Department is ORDERED to reinstate claimant's FAP allotment retroactively to the date of negative action. The Department is FURTHER ORDERED to re-designate claimant as the primary caretaker of the children in question. Should this status be re-disputed, the Department shall allow both sides to present verifications and evidence as appropriate, and the primary caretaker designations shall be awarded in accordance with BEM 212.



Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 11/05/09

Date Mailed: 11/05/09

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 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.

RJC/dj

cc:

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