

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: 2009-8132

Issue No: 3014

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

February 26, 2009

Kalamazoo County DHS

ADMINISTRATIVE LAW JUDGE: Tyra L. Wright

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 February 26, 2009. The Claimant and her husband personally appeared and testified. A family independence manager and an eligibility specialist represented the Department.

ISSUE

Did the Department properly exclude Claimant's minor children from her Food Assistance Program (FAP) case group?

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 December 4, 2008, Claimant applied for FAP benefits for a group size of seven, which included herself, her husband and her five children. (Exhibit pgs 3-19, Application).

(2) Claimant has joint custody of her children, ages three to eleven. (Exhibit pgs. 20-35, Judgment of Divorce).

(3) A Department manager reviewed Claimant's divorce judgment. Under the heading "Parenting Time" on page 4 the judgment states that the children's father "shall have parenting time with the minor children Wednesday 6:00 p.m. to Sunday 9:00 a.m." It further states that the children's mother, Claimant, "shall have parenting time with the minor children Sunday 9:00 a.m. to Wednesday 6:00 p.m."

(4) Consequently, Claimant has the children three nights per week and a total of three days and nine hours while their father has the children four nights per week and total of three days and 15 hours.

(5) The Department manager determined that the children's father is the primary caretaker as defined by policy PEM 212. Therefore, the Department found Claimant eligible for benefits for a group size of two, which excluded the children.

(6) Claimant disagreed with the Department excluding her children from the FAP group on the grounds that (1) she prepares more meals for the children because she prepares all meals from Sunday through Wednesday, (2) the judgment awards her the food stamp benefits, (3) the children's father is not contesting the children being in her FAP group, and (4) the children's father receives the disability checks for the two children who are disabled.

(7) The Department received Claimant's hearing request on December 17, 2008.

#### 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 (formerly known as the Family Independence Agency) 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).

### **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 212, pg. 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 (ie., not temporarily absent from the primary caretaker's home).

Determine 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).

**Example 1:** Patty normally lives with Mom and they receive FAP benefits. Dad has scheduled visitation every other weekend, two weeks at Christmas, two weeks at Easter and eight weeks in the summer. When Patty is gone for the eight weeks in the summer, Dad (absent caretaker) could apply and receive FAP benefits with Patty in his group, if otherwise eligible. Patty would have to be removed from Mom's case because she **no** longer meets the definition of temporary absence.

**Note:** If in the example above, Patty returns every other weekend to visit with Mom during the summer visitation with Dad, she remains on Mom's case (ie., she is temporarily absent).

**Example 2:** Eric is ten years old. His mom works during the week. Eric's mom drops him off at his grandmother's house on Sunday evening and picks him up on Friday evening. Eric's grandmother is primarily responsible for his care and supervision in the home where he sleeps more than half the days in a month when averaged over the next twelve months. Eric's grandmother is the primary caretaker. His mom is considered an absent caretaker.

**Example 3:** Mom works during Eric's normal sleep hours, and Eric is only at Grandma's to sleep while mom works (he is not there all week). Mom is the primary caretaker. Grandma is providing child care. (PEM 212, pgs. 3-4)

Under PEM 212, when parents who do not live together have joint physical custody of a child, only one parent can be determined the primary caretaker for the purpose of determining assistance benefits. The child is in the group of 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 calendar month, on average, in a twelve-month period." In this case, the five minor children at issue sleep at their father's house four nights each week. In [REDACTED], for example, which is the month Claimant applied for FAP benefits, her children slept at their father's house 16 days and at Claimant's house 15 days. In [REDACTED], they would have slept at the father's house 17 days and at Claimant's house 14 days. The undersigned has reviewed the Judgment of Divorce and finds that Claimant's testimony and the Judgment are consistent in stating the time that the children spend at each parent's house. The fact that the children eat more meals at Claimant's house does not establish that she is the primary caretaker.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly excluded Claimant's children from her FAP group.

Accordingly, the Department's action is AFFIRMED.

/s/ \_\_\_\_\_  
Tyra L. Wright  
Administrative Law Judge  
for Ismael Ahmed, Director  
Department of Human Services

Date Signed: March 9, 2009

Date Mailed: March 13, 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 of on the Department's motion where the final decision cannot be implemented within 60 days of the filing of the original request.

2009-8132/TW

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.

TW/dj

cc:

