

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.: 2010-20843
Issue No.: 3002/3014/5026/2015
Case No.: [REDACTED]
Load No.: [REDACTED]
Hearing Date:
May 24, 2010
Wayne County DHS (18)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Claimant's request for a hearing. After due notice, a telephone hearing was conducted from Detroit, Michigan on May 24, 2010. Claimant appeared and testified. On behalf of Department of Human Services (DHS), [REDACTED], Manager, appeared and testified.

ISSUE

1. Whether DHS properly calculated Claimant's group composition for Food Assistance Program benefits beginning 1/2010.
2. Whether DHS properly denied Claimant's request for Medical Assistance coverage.
3. Whether DHS properly denied Claimant's request for State Emergency Relief for rent arrearage due to Claimant not meeting the emergency requirements of DHS policy.

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 applied for State Emergency Relief (SER), Food Assistance Program (FAP) and Medical Assistance benefits on 1/7/10
2. Claimant's SER application sought assistance with a rent arrearage for an unspecified amount.
3. At the time of Claimant's 1/7/10 SER request, Claimant's landlord had not requested a court date.
4. On 1/14/10, Claimant was denied SER assistance for rent arrearage for failure to meet the emergency requirements of SER policy.
5. Claimant and his ex-wife share joint physical and legal custody of three children.
6. The three children primarily reside with Claimant's ex-wife. Exhibit 10.
7. DHS processed Claimant's 1/7/10 FAP request without considering Claimant's three children as FAP group members.
8. DHS processed Claimant's 1/7/10 FAP request without crediting Claimant for child support and a rental obligation.
9. DHS denied Claimant's request for MA benefits for failing to meet primary caretaker requirements necessary for Medicaid.
10. Claimant submitted a hearing request on 1/28/10 regarding: denial of SER (rent arrearage), denial of MA benefits and disputing his FAP benefits due to omission of his rent obligation, child support obligation and the three children from his FAP benefit group.

CONCLUSIONS OF LAW

Food Assistance Program

The Food Assistance Program (formerly known as the Food Stamp 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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

Claimant's primary argument is that DHS failed to include three children as FAP group members when calculating Claimant's FAP benefits. Claimant contends that he had joint legal and physical custody of the children and should get credit for being a primary caretaker.

The child is always in the FAP group of the primary caretaker. BEM 212 at 3. If a child splits time between caretakers, then a primary caretaker must be determined. *Id.* In such a case, only one person can be a primary caretaker and the other caretaker is an absent caretaker. *Id.*

The primary caretaker (for purposes of FAP benefits) is determined by calculating the nights that each child spends with each caretaker. "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." *Id.*

In the present case, Claimant has joint physical and legal custody of all three children. Exhibit 10. The parenting time arrangement gives Claimant two weeks with custody on Friday-Monday and his ex-wife custody from Monday-Friday. Claimant has additional parenting time on Wednesday evening. The two weeks are followed by one week of inverse times where

Claimant has custody of the three kids on Monday-Friday and his ex-wife custody on Friday-Monday with parenting time on Wednesday evening. Claimant and his ex-wife split time evenly on holidays and other events. The result is that the children would sleep at Claimant's residence for 10 nights out of a 21 day period. Though Claimant has slightly less custody than his ex-wife, 10 out of 21 days is found to be "virtually" half the days within a month as required by BEM 212.

Claimant established that he meets the custodial requirement of being a primary caretaker. His ex-wife would also meet the custodial requirements. Thus, the primary caretaker should be determined by the caretaker that applies and is found eligible first.

Claimant applied for FAP benefits on 1/7/10. As of 1/7/10, DHS testimony established that Claimant's children had Medicaid through their mother but no FAP benefits. DHS indicated that they could consider Claimant to be a primary caretaker for purposes of FAP benefits because the competing caretaker was only receiving MA benefits at the time of Claimant's FAP benefits request.

Though it seems contradictory to have children on a FAP benefits case with the father as caretaker and on an MA benefits case with the mother as caretaker, DHS policy appears to allow for such instances. By defining "primary caretaker" for FAP benefits differently than "primary caretaker" for MA benefits, DHS policy essentially concedes that children may have different primary caretakers as long as it is not for the same benefits program.

Claimant was not given credit for paying rent and child support in the 1/2010 or subsequent FAP budgets. Claimant listed a \$625 monthly rental expense on his 1/7/10 Assistance Application. Exhibit 9. DHS also verified that Claimant had child support obligations. Exhibit 7. However, the 1/2010 (Exhibit 5) and 2/2010 FAP budgets (Exhibit 6) neglected to give Claimant

credit for paying rent or child support. No evidence was submitted indicating that DHS appropriately omitted the rent and child support expenses from the FAP budget. It is found that DHS improperly omitted Claimant's rent and child support expense from the 1/7/10 and subsequent FAP benefit calculation.

Medical Assistance

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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

MA group composition policy differs from FAP group composition policy. MA group composition policy reads, "A child is considered to be living with only one parent in a joint custody arrangement. This parent is the primary caretaker."

In the present case, Claimant's divorce judgment reads, "the children's primary residence shall be with Plaintiff." Exhibit 10. The "Plaintiff" is Claimant's ex-wife. Thus, for purposes of MA benefits, Claimant is not the primary caretaker for his children.

Claimant was denied Medicaid by DHS by virtue of not being a primary caretaker to minor children. As a non-senior, non-primary caretaker and non-disabled person, Claimant could only be eligible for Adult Medical Program coverage. At the time of Claimant's request for MA benefits, AMP coverage was not available to new applicants. It is found that DHS properly denied MA benefits to Claimant.

State Emergency Relief

The State Emergency Relief (SER) program is established by 2004 PA 344. The SER program is administered pursuant to MCL 400.10, *et seq.*, and by final administrative rules filed with the Secretary of State on October 28, 1993. MAC R 400.7001-400.7049. Department of Human Services (formerly known as the Family Independence Agency) policies are found in the Emergency Relief Manual (ERM).

In the present case, Claimant sought SER for assistance with a rent arrearage. Claimant received a Notice to Quit from the landlord indicating that Claimant had seven days to move, to pay the rent arrearage or Claimant could be taken to court by the landlord.

ERM 303 states homelessness is a requirement to meet the “emergency” component for rent arrearage eligibility. One of the accepted verifications of emergencies is, “A court summons, order, or judgment was issued which will result in the SER group becoming homeless.” A Notice to Quit is the first step in the eviction process; however, the notice is not a valid verification of homelessness or imminent homelessness. Had Claimant’s landlord followed the Notice to Quit with a court date requesting eviction, Claimant might have been eligible for SER assistance with rent arrearage. Claimant testified that the landlord did not request a court date following the Notice to Quit. It is found that Claimant failed to meet the “emergency” requirement for SER (rent arrearage).

DECISION AND ORDER

The actions taken by DHS are AFFIRMED in part. The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant’s 1/7/10 request for MA benefits and SER benefits.

The actions taken by DHS are REVERSED in part. The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS improperly calculated Claimant's 1/7/10 request for FAP benefits. It is ordered that DHS recalculate Claimant's FAP benefits beginning 1/7/2010 giving Claimant appropriate credit for his child support and rent obligations and by giving Claimant "primary caretaker" status for purposes of FAP benefits only.



Christian Gardocki
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 06/08/2010

Date Mailed: 06/08/2010

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 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.

CG/jlg

cc:

