

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg No. 201042048
Issue No. 1022; 2024
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: October 19, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 held on Tuesday, October 19, 2010. The claimant personally appeared and testified on her own behalf.

ISSUE

Did the department properly determine the claimant's eligibility for Family Independence Program (FIP) assistance and Medical Assistance (MA-P) benefits based on the foster care children listed on her application?

FINDINGS OF FACT

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

1. The claimant already had an active FIP case for two foster children in her home.
2. On December 4, 2009, the claimant completed an application to add two other children to her FIP case.
3. The department caseworker was unable to add the children to the FIP case until January 2010 because they are still active on their mother's case even though the children were supposedly moved in December 2009 and they were added to the claimant's case in January 2010.

4. On January 12, 2010, the claimant was mailed redetermination papers for an interview on February 2, 2010 at 1:00 p.m. The claimant did not keep her appointment for redetermination. (Department Exhibit 3-6)
5. On February 6, 2010, the department caseworker sent the claimant a notice that her case would be closed on February 28, 2010 for failure to complete the redetermination process. (Department Exhibit 8-12)
6. On April 6, 2010, the department received a hearing request from the claimant, contesting the department's negative action.
7. During the hearing, the claimant stated that all four children were placed in her home by foster care on [REDACTED] and that she applied for benefits in July 2009.
8. During the hearing, the record was left open for the department caseworker to contact the Children's Protective Services caseworker to determine exactly when the children were placed in the home.
9. On October 20, 2010, the foster care specialist sent a notice stating that the claimant's foster care children were made temporary court wards under the jurisdiction of the Wayne County Juvenile Court and placed in foster care with their aunt, the claimant, where they have been residing since [REDACTED]. At the present time, the four children continue to reside with the claimant.

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).

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. BEM, 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. BEM, 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). BEM, Item 212, p. 3.

VERIFICATION REQUIREMENTS

Verify group composition factors if the information given is questionable. Such factors might include boarder status, aged or senior members, and inability to purchase and prepare meals separately.

Primary Caretaker

Accept the client's statement regarding the number of days per month (on average) a child sleeps in their home. Verify only if questionable or disputed by the other parent.

Senior Impaired Status

You **must** verify a person's impaired status if it is not obvious and it affects the FAP group composition. BEM 212, p. 9.

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.

DEFINITIONS

Program Group

The **program group** means those persons living together whose income and assets must be counted in determining eligibility for assistance.

Note: Disqualified FIP members remain in the program group.

Eligible Group

The **eligible group** means those persons in the program group who meet all eligibility factors. **Exception:** Otherwise eligible persons who are serving an immunization penalty are included in the eligible group.

Caretaker

A **caretaker** is a parent, stepparent, or other person who acts as a parent to a dependent child by providing physical care and supervision of the child. See "Who May Be a Caretaker" later in this item.

Dependent Child

A **dependent child** is an unemancipated child who lives with a caretaker and is:

- . under age 18; **or**
- . age 18 or 19 and a full-time high school student expected to graduate before age 20.

A child is **emancipated** if:

- . validly married; **or**
- . emancipated by court order; **or**
- . in active duty with the armed forces of the United States.

Living Together

Living together means sharing a home where family members usually sleep except for temporary absences.

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. BEM, Item 210, pp. 1-2.

DETERMINING THE PROGRAM GROUP

Determine which persons living together to include in the program group. Some persons are required to be in the program group and other persons may request to be included in the program group. BEM, Item 210, p. 3.

RULES FOR GROUPS

Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA

Determine the fiscal and asset groups separately for each person requesting MA. When referring to the group listings, remember:

- . Only persons living with one another can be in the same group. See **“LIVING WITH.”**
- . Certain persons cannot be fiscal or asset group members in SSI-related MA. See **“EXCLUDED PERSONS”**.
- . There is NO asset test for Group 2 FIP-related MA and the Healthy Kids categories.
- . **For all Group 2 FIP-related MA and Healthy Kid categories**, when a child lives with both parents who do not live with each other (e.g., child lives with his mother two weeks each month and his father the other two weeks), only one parent, the primary caretaker, is in the fiscal group. You must determine a **primary caretaker**. The primary caretaker is the parent 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. Vacations and visitations with the absent parent do not interrupt primary caretaker status. See rules in BEM 255 concerning support from the other parent. See “Verification Sources” in this item:
 - .. 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 parents. A child is considered to be living with only one parent in a joint custody arrangement. This **parent is the primary caretaker**.

- . **For all Group 2 FIP-related MA and Healthy Kids categories**, count a pregnant woman as at least two members. If twins **are verified**, count the woman as three, etc.
- . **For BEM, Item 125 and 126 categories only**, continue to count the woman as two (or three, etc.) for two calendar months following her pregnancy termination for each unborn not resulting in a live birth. BEM, Item 211, pp. 1-2.

MA GROUP COMPOSITION

DEPARTMENT POLICY

LIF

Group composition policy for Low-Income Families (LIF) is in BEM 110. Do not use the policy in this item to determine group composition for LIF. BEM, Item 211, p. 1.

In the instant case, there seems to have been some confusion as to when the children were in the home. Based on the letter provided by the foster care specialist the four kids were placed in the claimant's home on [REDACTED]. As a result, the claimant is eligible for benefits for the children placed in her home. Once children are removed by Children's Protective Services from their parent and are not going to be returned within 30 days the children need to be removed from the parent's case where it can be left open for the parent, but the children's benefits need to be removed from the case to support the home they are in. The claimant is eligible for MA and FIP from when the children were placed in her home on [REDACTED].

In addition, there was some confusion about a missed appointment for redetermination where the claimant felt that she had done a redetermination in December 2009 and did not need to do another one in February 2010. The claimant expressed some confusion in trying to receive benefits for the children placed in her care from foster care and missed her appointment. The claimant was informed by this Administrative Law Judge that if you apply for benefits you have to contend with the rules of the department and she should have called her caseworker to inquire about the appointment or made the appointment.

Therefore, the department has not established that it was acting in compliance with department policy by determining that the claimant was not eligible to receive FIP and MA benefits for the foster care children placed in her home in [REDACTED].

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department did not appropriately deny the claimant's application for FIP and MA benefits of the four foster care children placed in her home.

Accordingly, the department's decision is **REVERSED** and the department is **ORDERED** to redetermine eligibility for FIP and MA from June 2009 for the four foster care children placed in the claimant's home.

/s/
Carmen G. Fahie
Administrative Law Judge
For Ismael Ahmed, Director
Department of Human Services

Date Signed: November 24, 2010

Date Mailed: November 29, 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 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.

CGF / vc

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