

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

IN THE MATTER OF:



Reg. No: 2010-47534
Issue No: 2015, 3014
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 9, 2010
Washtenaw County DHS (20)

ADMINISTRATIVE LAW JUDGE: Landis Y. Lain

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, an in-person hearing was held on November 9, 2010. Claimant was represented at the hearing by [REDACTED]

ISSUE

Did the Department of Human Services (the department) properly fail to add the child to claimant's 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) On May 3, 2010, claimant requested that her nephew, child A, be added to her Family Independence Program, Food Assistance Program, Medical Assistance Program, and Child Development and Care Services Program.
- (2) The Department of Human Services attempted to add the child and discovered that the child was active on his mother's case and therefore the Department of Human Services did not add the member to the Customer Child Care case.
- (3) On July 7, 2010, the department caseworker sent claimant notice advising her of its inability to place the child on her case as a member add.
- (4) On July 7, 2010, claimant filed a request for a hearing to contest the department's negative action.

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 (BAM), the Program Eligibility Manual (BEM) 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 (BAM), the Program Eligibility Manual (BEM) 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 (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (PRM).

The Child Development and Care program is established by Titles IVA, IVE and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (DHS or department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015.

The Department of Human Services believes that children are best served by living in supportive family settings. The mutual responsibility of family members for each other and the commitment to caring for each other are key to building strong families. Parents are responsible for the care and support of their minor children. In the absence of parents, children may be cared for by other adults having specific relationships to the children. Spouses are responsible for each other. All immediate family members living together are expected to share income, assets, and expenses (BEM, Item 210).

Group composition is the determination of which individual's living together are included in the FIP eligibility determination group and the FIP certified group. To be eligible for FIP, a child must live with a legal parent, stepparent or other qualifying caretaker. A

caretaker is a legal parent or stepparent living in the home or when no legal parent or stepparent lives in the home another adult who acts as a parent to a dependent child by providing physical care to provision (BEM, Item 210, p. 1).

In the instant case, claimant testified on the record that she is the child's caretaker relative and co-guardian and takes care of the child's day to day care even though the child remains on his mother's case.

The eligibility determination group means those individuals living together whose information is needed to determine FIP eligibility. Based on data entry and rules programmed into the system, BRIDGES assigns an EDG participation status to each member of the household. Joint physical custody occurs when parents or other caretaker's alternate taking responsibility for the child day to day care or supervision in separate homes. It may be included in a court order or may be an informal arrangement between parents or other caretakers. 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 the month, when averaged over a 12 month period. The 12 month period begins at the time the determination is made. Once a caretaker is determined to be the primary caretaker, the child's other caretakers are considered absent caretakers (BEM, Item 210, p. 2).

A dependent child can be considered living with only one caretaker. BRIDGES makes a primary caretaker determination. 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 12 month period (BEM, Item 210, p. 7).

When the number of days per month a child sleeps in the home of multiple caretakers is questionable or disputed, give each caretaker the opportunity to provide evidence of their claim. Base your primary caretaker determination the best available information of the evidence supplied by the caretakers (BEM, Item 210, p. 8).

When caretaking time of a dependent child is disputed or questionable, examples of proof to consider include but are not limited to:

1. The most recent court order that addresses custody and/or visitation
2. school contact or records indicating who enrolled the child in school, first person called in case of emergencies, and/or who arranges for the child's transportation to and from school
3. child provider contact, or records showing who makes and pays for childcare arrangements and who drops off and picks up the child.
4. Medical providers contact or records showing where the child lives and who usually brings the child to medical appointments.

5. other documents or collateral contacts and support or contradict the caretakers claim.

In the instant case, claimant does have guardianship papers of the child. The department is to verify termination of legal guardianship before terminating the protective payee.

In the instant case, child custody is disputed by claimant. Although a child already has an open case in the mother's name, the department is charged with determining who the primary caretaker of the child is. Therefore, the department should require the mother and claimant to provide verification information as to who the actual primary caretaker of the child is and should then open a Department of Human Services case for Medical Assistance, Family Independence Program, Food Assistance Program, and Child Development and Care Services, for which ever caretaker is the primary caretaker and is otherwise eligible for those benefits.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that the department has not established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with department policy when it failed to make a determination as to whether or not claimant was the primary caretaker of the child. This is a child custody dispute case and the department is charged in BEM 210 with making a determination as to who the primary caretaker of the child is and therefore who will be eligible to receive any Department of Human Services benefits for the child.

Accordingly, the department's decision is REVERSED. The department is ORDERED to reinstate claimant's application and request for the child to be added to her case. The department shall then conduct an investigation with the mother of the child and claimant to determine who can provide verification information as to the child's status. Once the department has determined who the primary caretaker of the child is, the department shall then add that child to the appropriate case and cancel any other Department of Human Services benefit cases if the child remains otherwise eligible for said benefits.

Landis

/s/

Y. Lain

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

Date Signed: December 7, 2010

Date Mailed: December 7, 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.

LYL/alc

cc:

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