

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: 2010-14483

Issue No: 3014; 1022

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

March 4, 2010

Genesee 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 claimant's request for a hearing. After due notice, an in-person hearing was held on Thursday, March 4, 2010. The claimant personally appeared and testified on her own behalf with her authorized representative/paralegal, [REDACTED]

ISSUE

Did the department determine that the claimant was not eligible for Food Assistance Program (FAP) and Family Independence Program (FIP) because the claimant did not have an eligible child?

FINDINGS OF FACT

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

(1) The claimant was a recipient of Family Independence Agency (FIP), Child Development and Care Program (CDC), and Food Assistance Program (FAP).

(2) Subsequently, a phone call was made to the fraud hotline stating that the claimant's son did not reside with her, but with the father in [REDACTED]. The caller stated that she was the claimant's son's father's mother who had been providing daycare as a daycare provider to the claimant's son.

(3) On July 21, 2009, the claimant's benefits cases of FIP and CDC were closed to reflect the claimant's son not being in the home. (Department Exhibit 3/20 – 10/20)

(4) On September 15, 2009, the claimant reapplied for FIP and MA.

(5) On December 7, 2009, the department received a hearing request from the claimant contesting the department's negative action.

(6) On December 9, 2009, the claimant attended Work First.

(7) On December 12, 2009, the claimant was approved for FIP and medical.

(8) During the hearing, the claimant's authorized representative stated that this case was about her June 21, 2009 case closure, which resulted in her reapplying for FIP and MA on September 15, 2009.

(9) During the hearing, the department caseworker stated that the claimant did not receive FIP for the month of September 2009, no loss of benefits for FAP, and that her CDC case closed in August 2009, as a result of the claimant's son's grandmother calling to say on April 22, 2009 that the claimant's son was no longer in the home.

(10) During the hearing, the claimant stated that her son had doctor's appointments on [REDACTED]

(11) During the hearing, the claimant provided a hand written individual immunization record that was not signed by a doctor's office stating that the claimant's son had shots [REDACTED]

(12) During the hearing, the department caseworker stated that the claimant's grandmother who issued the fraud alert for the claimant had been paid for daycare until the claimant's daycare case closed in August 2009.

(13) After the hearing, the claimant submitted further documentation of medical records, a letter from the claimant's son's grandmother stating that she did not call the fraud hotline and has continued to provide daycare services for the claimant for cash payment since CDC closed in June 2008, and a letter from the claimant's landlord confirming that the claimant's son has been in her custody.

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 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 (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

The department's program eligibility manuals provide the following relevant policy statements and instructions for caseworkers:

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. PEM, 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. PEM, 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). PEM, 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.

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. PEM, 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. PEM, 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 Kids 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 PEM 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 PEM, 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. PEM, Item 211, pp. 1-2.

FOOD ASSISTANCE PROGRAM GROUP COMPOSITION

DEPARTMENT POLICY

You must determine who is included in the Food Assistance Program (FAP) group prior to evaluating the nonfinancial and financial eligibility of everyone in the group.

To establish FAP group composition determine:

1. Who lives together.
2. The relationship(s) of the people who live together.
3. Whether the people living together purchase and prepare food together or separately, and
4. Whether the person(s) resides in an eligible living situation. (See “LIVING SITUATIONS” in this item.)

PEM, Item 212, p. 1.

RELATIONSHIPS

The relationship(s) of the people who live together affects whether they must be included or excluded from the group. First determine if they **must** be included in the group. If they are **not** mandatory group members, then determine if they purchase and prepare food together or separately. PEM, Item 212, p. 1.

Temporary Absence

A person who is temporarily absent from the group is considered living with the group.

A person’s absence is temporary if:

- . his location is known; **and**
- . he lived with the group before his absence (newborns are considered to have lived with the group); **and**
- . there is a definite plan for his return; **and**
- . the absence has lasted or is expected to last 30 days or less.

Exception 1: The absence may last longer than 30 days if the absent person is in a hospital and there is a plan for him to return to the home. PEM, Item 212, p. 2.

FOOD PURCHASE AND PREPARATION

The phrase **purchase and prepare together** is meant to describe persons who customarily share food in common.

Persons **customarily** share food in common if:

- . they each contribute to the purchase of food; or
- . they share the preparation of food, regardless of who paid for it; or
- . they eat from the same food supply, regardless of who paid for it.

In general, persons who live together and purchase and prepare food together are members of the same FAP group.

Persons who normally purchase and prepare separately maintain that distinction even when they are temporarily sharing food with others.

Persons are **temporarily** sharing food if:

- . they had previously purchased and prepared separately; **and**
- . others are sharing their food until the person:
 - .. is approved for FAP, **or**
 - .. qualifies for other cash assistance, **or**
 - .. secures some other source of income.PEM, Item 212, p. 5.

In the instant case, the claimant's FAP and cash assistance case was closed because the claimant's son's grandmother phoned in a fraud alert that the claimant's son was not living with her in [REDACTED], but with his father in [REDACTED].

On July 21, 2009, the claimant's benefits cases of FIP and CDC were closed to reflect the claimant's son not being in the home. During the hearing, the claimant provided a hand written individual immunization record that was not signed by a doctor's office stating that the claimant's son had shots [REDACTED]. After the hearing, the claimant submitted further documentation of medical records, a letter from the claimant's son's grandmother stating that she did not call the fraud hotline and has continued to provide daycare services for the claimant for cash payment since CDC closed in June 2008, and a letter from the claimant's landlord confirming that the claimant's son has been in her custody.

Timeliness was not an issue because the claimant stated that she did not get a complete notice, but that she was missing several pages and did not know what it was about. The department caseworker agreed to waive timeliness and allowed the claimant to provide written documentation that the claimant's son was in her custody.

This Administrative Law Judge finds that the claimant has proved that she had custody of her child and that he has always been living with her and not with her son's father in [REDACTED]. The department needs to do an investigation to determine who called in the false report and the claimant is entitled to any benefits that she lost during the contested time period.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department was not acting in compliance with department policy when it closed the claimant's FIP case for the months of September 2009 and her CDC case in August 2009.

Accordingly, the department's action is **REVERSED** and the department is ordered to reinstate the claimant's FIP benefits for the month of September 2009 and her CDC benefits from August 2009.

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

Date Signed: May 5, 2010

Date Mailed: May 5, 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.

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