

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: 2010-29445
Issue No: 1022
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 20, 2010
Genesee County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Keegstra

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 telephone hearing was held on May 20, 2010. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly exclude the claimant's two children from her Food Assistance Program (FAP) group from the date of application through January, 2010?

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 applied for FIP benefits for her family on August 10, 2009.
2. Two of the claimant's children (Jessica and Emily) were already active on another case in Crawford County. (Department Exhibit 1)
3. The case worker emailed Crawford County on August 10, 2009, requesting the children be removed from that case, to place them on the claimant's case.

4. Crawford County did not act on the information timely and the children remained on the Crawford County case until January 1, 2010, when the case closed for failure to return a Redetermination. (Department Exhibit 2)

5. The claimant requested a hearing on March 22, 2010.

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).

Department policy states:

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.

Temporary Absence

A person’s absence is temporary if:

- . his/her location is known; **and**

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

Exception: The absence may last for more than 30 days if the absent person is:

- .. in the hospital (including a psychiatric hospital); or
- .. in a residential substance abuse treatment center; or
- .. absent for training or education; or
- .. a child who is living apart from a parent when a parent is residing in a domestic violence shelter, or
- .. absent due solely to active duty in the uniformed services of the U.S.

Note: A dependent child can be temporarily absent from only one home. When a child sleeps in the home of multiple caretakers who do not live together, make a Primary Caretaker determination. See “**Determining Primary Caretaker**” in this item. PEM, Item 210, p. 2.

Determining Primary Caretaker

When a child has multiple caretakers who do not live together (e.g., joint physical custody or parent/grandparent), determine who is 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 month, when averaged over a twelve-month period. The twelve-month period begins at the time the determination is being made.

Once you have determined who is the Primary Caretaker, the child’s other caretakers are considered Absent Caretakers.

Note: Vacations and/or visitations with an Absent Caretaker do not change the result of the Primary Caretaker determination. However, when a child is continuously absent from or expected to

be continuously absent from the home of the Primary Caretaker for more than 30 consecutive days, (i.e., does not meet the definition of temporary absence), remove the child's need from the FIP case.

Only the Primary Caretaker can receive FIP for a child. PEM, Item 210, p. 4.

Changes in Primary Caretaker

Re-evaluate Primary Caretaker status when:

- a change occurs that will cause the child to sleep in another caretaker's home more than half the days in a month, when averaged over the next twelve months; or
- a second caretaker disputes the first caretaker's claim that a child sleeps in his/her home more than half the days in a month, when averaged over the next 12 months; or
- a second caretaker applies for assistance for the same child. PEM, Item 210, p. 6.

In this case, the claimant applied for FIP benefits for herself, her husband and her children on August 10, 2009. The department discovered that two of the claimant's children (██████████) were active on another case in Crawford County (Grayling). The department worker emailed a worker in Crawford County to remove the children from that case, so she could add them to the claimant's case. Unfortunately, the two children did not get removed from the other case in Crawford County, thus Genesee County was unable to add them to the claimant's case.

The claimant testified that she discovered her mother was claiming her two children on a FIP case. The claimant testified that she and her family had lived with her mother for a while. When her family moved to another house, she allowed her two children to remain with her mother for a few weeks, so they wouldn't have to switch schools during the school year. However, her mother had never had custody of the children. The claimant indicated that her

mother had applied for FIP and received the cash grant under false circumstances as she had never had custody of the children.

The claimant and her husband are the caretakers of the two children in question. It appears that the claimant's mother obtained FIP benefits under false pretenses. Thus, when the claimant applied for FIP benefits, the children should have been placed on her case. The department failed to act and the children remained on the claimant's mother's case in error.

Thus, the department must add the two children to the claimant's FIP case as of the date of application and issue the claimant any retroactive FIP benefits that she is entitled to receive. The department worker testified that the claimant was considered excess income for FIP benefits for some of the disputed time and that, if the children had been on the case as they should have been, she would not have been excess income. Thus, the department worker indicated that she would refigure FIP eligibility and benefit amount from the application date forward.

It is noted that the claimant's mother appears to have received FIP benefits in a fraudulent manner. The department may wish to pursue the recoupment of benefits and program disqualification against the claimant's mother.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly failed to include the two children in the claimant's FIP program group.

Accordingly, the department is REVERSED. The department shall:

1. Add the two children to the claimant's FIP case back to the date of application.
2. Determine FIP eligibility and benefit amount (including the two additional children)

and issue the claimant any additional FIP benefits that she is entitled to receive.

SO ORDERED.

/s/
Suzanne L. Keegstra
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 2, 2010

Date Mailed: June 3, 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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