

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: 2010-31196
Issue No: 3002
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
May 27, 2010
St. Joseph County DHS

ADMINISTRATIVE LAW JUDGE: Steven M. Brown

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 conducted from Lansing, Michigan on May 27, 2010.

ISSUE

Whether the Department properly denied Claimant's Family Independence Program (FIP) and Medical Assistance (MA) applications?

FINDINGS OF FACT

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

- (1) On March 16, 2010, Claimant applied for FIP, MA and FAP benefits.
(Exhibits 1-4)
- (2) Claimant has joint legal and physical custody of her 15 year-old son with her ex-husband. (Exhibit 10)

(3) Claimant stated on her application that her son spends 15 ½ days a month with her and 15 ½ days with her ex-husband. (Exhibit 3)

(4) Claimant's address is [REDACTED]. (Exhibits 2, 5)

(5) Claimant's ex-husband's address is in [REDACTED]. (Exhibits 3, 27)

(6) Claimant's son attends [REDACTED]. (Exhibits 3, 6, 8)

(7) Claimant's ex-husband sent a note to Claimant's caseworker saying that he was not interested in any benefits and had no objection to Claimant applying for the same.

(Exhibit 26)

(8) The Department determined that Claimant was not entitled to FIP or MA benefits because Claimant's ex-husband was the primary caretaker of their son.

(9) On March 16, 2010, the Department sent Claimant a Notice of Case Action which informed her that application for FIP benefits was denied effective March 1, 2010 because – “Individual or group is not eligible for cash assistance. The individual(s) are not a dependent child, a caretaker/relative of a child, not pregnant, not aged or disabled, not a refugee or does not have a qualifying relationship to other household members.” It also informed her that her application for MA benefits was denied because – “We are unable to determine your eligibility for the Adult Medical Program because the program is closed to new enrollments at this time.”

(Exhibits 17-20)

(10) On April 1, 2010, the Department received Claimant's hearing request.

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

Joint physical custody occurs when parents or other caretakers alternate taking responsibility for the child's day-to-day care and 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 a month, when averaged over a twelve-month period. The twelve-month period begins at the time the determination is being made. Once a caretaker is determined to be the primary caretaker, the child's other caretakers are considered Absent Caretakers. BEM 210, p. 2.

When a child spends time with multiple caretakers who do not live together (e.g., joint physical custody, parent/grandparent, etc.), BRIDGES determines a primary caretaker based on the number of days per month a child sleeps in the home, entered on the child's individual household status screen. The Department must accept the client's statement regarding the number of days the child sleeps in the caretaker's home unless questionable or disputed by another caretaker. BEM 210, p. 7.

Only the primary caretaker can receive FIP for a child. If the child sleeps in the home of multiple caretakers an equal number of days in a month, when averaged over a twelve-month period, e.g. every other week, the caretaker who applies and is certified eligible first is the primary caretaker for that program. In this situation, it is possible to have a different caretaker for different programs. The Department should indicate that the child sleeps in the home 15 days per month on the child's individual household status screen in both parents' BRIDGES cases. When the number of days per month a child sleeps in the home of multiple caretakers is questionable or disputed, the Department should give each caretaker the opportunity to provide evidence of their claim. The Department should base its primary caretaker determination upon the best available information and evidence supplied by the caretakers. BEM 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:

- The most recent court order that addresses custody and/or visitation.
- School contact or records indicating who enrolled the child in school, first person called in case of emergency, and/or who arranges for the child's transportation to and from school.
- Child care provider contact or records showing who makes and pays for child care arrangements, and who drops off and picks up the child.
- Medical providers contact or records showing where the child lives and who usually brings the child to medical appointments.
- Other documents or collateral contacts that support/contradicts the caretaker's claim. BEM 210, p.12.

Also, for MA purposes, 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 visitation 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. BEM 211, p. 2.

In the instant case, Claimant testified that her son literally spends ½ the time with her and ½ with her ex-husband on an every other week basis. The Department determined that Claimant's ex-husband is their son's primary caretaker based on the school information. The February 2010 enrollment information, supplied by the Department, lists Claimant's son's address as [REDACTED]). Interestingly, "Father's address" is left blank and "Mother's address" is listed as [REDACTED]. "Resides with" is marked as "Mother and Father". The Verification of Student Information, completed by the Superintendent, states that the "Name of Responsible Person with whom the Student is Residing" is Claimant and lists her address as [REDACTED] most likely based on the "incorrect" enrollment information. The "Comments" are – Joint custody with Father & Mother. The April 2010 enrollment information supplied by Claimant lists her son's address as [REDACTED], her address as [REDACTED] and her ex-husband's address as [REDACTED]

I'm not really sure why the February enrollment information lists the father's address for Claimant's son and also says that it is Claimant's address. It would not make any difference to the school whether it was the mother's or father's address. Presumably, it was done that way so that Claimant appeared to be the primary caretaker, perhaps for benefit purposes. Despite that, there isn't anything in the school information that suggests that Claimant and her ex-husband don't share joint and equal custody of their son. That said, policy states that if the child spends an equal amount of time in each household, the caretaker who applies and is certified eligible first is the primary caretaker for that program. This is not a case of who applied first. In fact, Claimant's ex-husband, sent a note to Claimant's caseworker saying that he was not interested in any benefits and had no objection to Claimant applying for the same.

With the above said, based on the testimony and documentation offered at hearing, I do not find that the Department established that it acted in accordance with policy in denying Claimant's FIP and MA applications.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, does not find that the Department acted in accordance with policy in denying Claimant's FIP and MA applications.

Accordingly, the Department's FIP and MA determinations are REVERSED, it is SO ORDERED. The Department shall:

- (1) Process Claimant's FIP and MA applications retroactive to the original application date.
- (2) Issue Claimant supplemental benefits she is entitled to, if any.
- (3) Notify Claimant in writing of the Department's revised determinations.

(4) Claimant retains the right to request a hearing if she would like to contest the Department's revised determinations.

/s/ _____
Steven M. Brown
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: June 16, 2010

Date Mailed: June 18, 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.

SMB/vc

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