

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

IN THE MATTER OF:

[REDACTED]

Reg. No.: 201039991  
Issue No.: 3014  
Case No.: [REDACTED]  
Load No.: [REDACTED]  
Hearing Date: July 29, 2010  
Wayne County DHS (82)

**ADMINISTRATIVE LAW JUDGE:** Christian Gardocki

**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 July 29, 2010. The claimant appeared and testified; [REDACTED] also appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED], Manager, appeared and testified.

**ISSUE**

1. Whether DHS properly reduced Claimant's Food Assistance program (FAP) benefits based on an alleged change in household members.
2. Whether DHS properly terminated Claimant's Medical Assistance (MA) benefits based on an alleged change in household members.

**FINDINGS OF FACT**

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

1. Claimant was an ongoing FAP and MA recipient.
2. Claimant's FAP and MA benefits were based on a two person household which included Claimant and his minor child [REDACTED].
3. Claimant's mother also lived in the household but was not a member of Claimant's FAP or MA benefits group.
4. DHS received a report that [REDACTED] lived with his biological mother, not with Claimant.

5. Claimant and [REDACTED] mother split custody of [REDACTED] as follows: [REDACTED] stays with Claimant from Sunday morning through Wednesday evening; [REDACTED] mother has custody of [REDACTED] from Wednesday evening until Sunday morning.
6. DHS terminated Claimant's MA benefits based on Claimant not being a primary caretaker for [REDACTED] and having no other basis to receive MA benefits.
7. DHS reduced Claimant's FAP benefits by removing [REDACTED] from Claimant's FAP benefit group.
8. Claimant requested a hearing on 6/15/10 disputing the removal of [REDACTED] from Claimant's FAP and MA case.

### **CONCLUSIONS OF LAW**

#### **Food Assistance Program**

The Food Assistance Program (formerly known as the Food Stamp 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 (formerly known as the Family Independence Agency) administers the FAP program pursuant to MCL 400.10, et seq., and MAC R 400.3001-3015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

The child is always in the FAP group of the primary caretaker. BEM 212 at 3. If a child splits time between caretakers, then a primary caretaker must be determined. *Id.* In such a case, only one person can be a primary caretaker and the other caretaker is an absent caretaker. *Id.*

The primary caretaker (for purposes of FAP benefits) is determined by calculating the nights that each child spends with each caretaker. 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. *Id.*

In the present case, Claimant contends he is [REDACTED] primary caretaker because [REDACTED] spends the majority of time in his household. Claimant's argument may be true but is not relevant. DHS policy indicates the number of nights where the child sleeps to be the deciding factoring in determining which parent is the primary caretaker, not total amount of hours where the child spends his time.

Based on the testimony of Claimant's mother, [REDACTED] spends the night with Claimant three days per week (Sunday, Monday and Tuesday). Based on the same testimony,

██████ spends four evenings per week (Wednesday through Saturday) with his mother. Thus, ██████ spends more days per week with his mother than with Claimant. It is found that DHS properly found ██████ mother to be his primary caretaker, not Claimant. Thus, the FAP reduction removing ██████ from Claimant's FAP benefits is upheld.

Note that the above decision does not apply to future benefits. Thus, if circumstances change so that Claimant is the primary caretaker, Claimant may report this information to DHS for a new determination of primary caretaker status.

### Medical Assistance

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 (formerly known as the Family Independence Agency) 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 Reference Tables Manual (RFT).

MA group composition policy reads, "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." BEM 211 at 2. It is already found that ██████ sleeps in the household of his mother four days per week and with Claimant three days per week. Again, it is found that DHS properly determined Claimant not to be the primary caretaker for ██████.

As a non-disabled and non-caretaker of a minor child, Claimant is not currently eligible for any MA benefits. It should be noted that Claimant did allege a disability but has not been certified as disabled by DHS or SSA. It is found that DHS properly terminated Claimant's MA benefits as Claimant no longer has a basis to receive MA benefits.

As previously stated, the decision of the undersigned does not prevent Claimant from reporting changes in caretaker status to DHS in the future. If Claimant is able to establish primary caretaker status, Claimant may be eligible for MA benefits at that time.

### **DECISION AND ORDER**

The actions taken by DHS are AFFIRMED. The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly reduced Claimant's FAP benefits and terminated Claimant's MA benefits based on the finding

that Claimant is no longer the primary caretaker for his child.

/s/



Christian Gardocki  
Administrative Law Judge  
For Ismael Ahmed, Director  
Department of Human Services

Date Signed: August 16, 2010

Date Mailed: August 16, 2010

**NOTICE: 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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