

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: 20104435
Issue No: 1022
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
March 15, 2010
Wayne County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 hearing was held on March 15, 2010.

ISSUE

Was the Department in error when it failed to add claimant's child to his assistance 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) Claimant applied for FIP, FAP and MA assistance in Wayne County in April 2009.
- (2) Claimant listed on his assistance application that claimant's daughter was living with him.

- (3) The Department did not process the assistance application until August 2009, when claimant's daughter was removed from her mother's case.
- (4) The Department told the claimant that his request for assistance could not be processed until the daughter was removed from her mother's case.
- (5) The Department did not make a determination as to where claimant's child was residing.
- (6) Claimant filed for hearing on October 20, 2009, alleging that DHS should have processed his April 2009 assistance application.

CONCLUSIONS OF LAW

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

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) and Reference Tables (RFT).

The relationships of the people who live together affects whether they must be included or excluded from the group. Parents and their children under 22 years of age who live together must be in the same group. BEM 212.

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. BEM 212, 210. When a child spends time with multiple caretakers who do not live together—for example, cases of joint physical custody—a primary caretaker must be determined. BEM 212, 210.

Only one person can be the primary caretaker and the other caretaker is considered the absent caretaker, even if the absent caretaker cares for the child an equal amount of time. A child must always be in the FAP or FIP group of the primary caretaker. BEM 212, 210.

The primary caretaker is determined by using a twelve month period. The twelve month period begins when a primary caretaker determination is made. The case worker should ask the client how many days the child sleeps at his/her home in a calendar month. BEM 212, 210. This statement should be accepted without verification unless questionable or disputed by another caretaker.

However, if primary caretaker status is questionable or disputed, verification is needed. BEM 212, 210. In the case of disputes, both caretakers must be afforded a chance to provide evidence supporting his/her claim. BEM 212, 210. A determination must be made on the evidence provided by the caretakers. Verification must be requested of both caretakers. BEM 210.

Primary caretaker status is re-evaluated when a new or revised court order changing custody or visitation is provided, there is a change in the number of days the child sleeps in another caretaker's home and the change is expected to continue, on average, for the next twelve months, or a second caretaker disputes the first caretaker's claim that the child sleeps in his/her home more than half the nights in a month, when averaged over the next 12 months. Primary caretaker status is also re-evaluated when a second caretaker applies for assistance for the same child. BEM 212, BEM 210.

When primary caretaker status is re-evaluated, and becomes questionable or disputed, the final determination is based on the evidence provided by the caretakers. As stated, each caretaker must be given the opportunity to provide evidence supporting his/her claim. BEM 212, BEM 210. These verifications can include the most recent court order that addresses custody and/or visitation, school records indicating who enrolled the child in school, first person contacted in case of emergency, and/or who arranges for child's transportation to and from school, child care records showing who makes and pays for child care arrangements, and who drops off and picks up the child, or medical provider's records showing where the child lives and who generally takes the child to medical appointments. BEM 212, BEM 210.

Claimant argues that the Department never processed claimant's application for FIP, FAP and MA benefits on behalf of his daughter. Claimant testified that he was told that his request for

assistance could not be processed until the mother of the child in question removed her from her case.

The undersigned finds the claimant generally credible. While it is noted that a DHS-3503 is in the file requesting this information of claimant, the verification request has no address on it, and therefore, cannot be shown to have been given or mailed to the claimant. Claimant testified that he never received the form.

Additionally, the form requests “documentation showing where [REDACTED] is living”. Claimant’s daughter’s name is [REDACTED], not [REDACTED], so if claimant did receive the form, it is arguable as to whether the form requested the correct information.

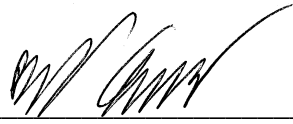
Finally, it should be noted that the Department, if they believed claimant’s statement regarding the living situation of his daughter to be questionable, was required to request verification from the mother. The fact that they did not shows that they did not actually make a determination as to where claimant’s daughter was living. An actual determination would have required verification requests from both parties—failing to do so means that there was no actual determination. It is undisputed that the Department did not request information from the mother. Therefore, as the Department did not make an actual inquiry or determination, the Department was in error.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department’s denial to process claimant’s assistance application of April 2009 was incorrect.

Accordingly, the Department’s decision is REVERSED.

The Department is ORDERED to process claimant's assistance application retroactively to the date of application. The Department is FURTHER ORDERED to request and make an actual determination of claimant's primary caretaker status during the time in question.



Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 07/08/10

Date Mailed: 07/12/10

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.

RJC/dj

cc:

