

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. 201044942
Issue No. 2015
Case No. [REDACTED]
Load No. [REDACTED]
Hearing Date: August 31, 2010
Kent 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 the claimant's request for a hearing. After due notice, a telephone hearing was held on Tuesday, August 31, 2010. The claimant personally appeared and testified with his wife, [REDACTED] as a witness.

ISSUE

Did the department properly determine that the claimant as the stepfather was not eligible for Group 2 Medical Assistance (MA Caretaker Relative Category) because he was not the biological parent, legal guardian, or adoptive parent of any of the eligible children in the home?

FINDINGS OF FACT

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

1. On August 3, 2009, the claimant applied for MA for himself only. (Department Exhibit 2-17)
2. On September 11, 2009, the claimant's application was denied for failure to provide verifications and the claimant was sent a denial notice.
3. On December 18, 2009, the department received a hearing request from the claimant, contesting the department's negative action.

4. On February 3, 2010, the department determined that the denial for failure to provide verifications was an error because the verifications were available.
5. On February 10, 2010, the department received a retro application to July 2009.
6. On March 8, 2010, the department caseworker denied the claimant's application for not qualifying for any Medicaid programs and that the AMP program was frozen. The claimant was not disabled, was not under 21 or over 65, did not have any minor biological children in the home, or was the primary caretaker of a minor child through legal guardianship or adoption.
7. On March 11, 2010, the department received another hearing request on behalf of the claimant.

CONCLUSIONS OF LAW

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

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). BEM, Item 212, p. 3.

MA GROUP COMPOSITION

DEPARTMENT POLICY

LIF

Group composition policy for Low-Income Families (LIF) is in BEM 110. Do not use the policy in this item to determine group composition for LIF. BEM, Item 211, p. 1.

Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA

Use fiscal groups and, for SSI-related MA, Group 2 Persons Under Age 21 and Group 2 Caretaker Relative, asset groups to determine the financial eligibility of a person who requests

MA and meets all the nonfinancial eligibility factors for an MA category.

Individual family members may be eligible under different MA categories. You must explore all categories for each person who requests MA. See "CHOICE OF CATEGORY" in BEM 105. BEM 211, p. 1.

DEFINITIONS

Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA

"**Child**" means an unmarried person under age 18.

"**Adult**" means a person who is married or age 18 or older. BEM, Item 211, p. 1.

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 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.**

- . **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 BEM, 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. BEM, Item 211, pp. 1-2.

LIVING WITH

Group 2 FIP-Related MA, Healthy Kids and SSI-Related MA

Living with others means sharing a home where family members usually sleep, **except** for temporary absences. A temporarily absent person is considered in the home. BEM, Item 211, p. 2.

In the instant case, the claimant is married to the minor children in the home's biological mother, but the claimant is not the biological father, legal guardian, or adoptive parent of any of the minor children in the home. As a result, the claimant is not eligible for MA as a biological parent or a caretaker relative even though he is married to the minor children in the home's biological mother. For the claimant to be eligible for MA, the claimant would have to adopt a minor child in the home or be the legal guardian of that child. If the claimant was named the primary caretaker of the child with the biological

mother being in the home, a CPS referral would be made unless the biological parent was disabled.

Therefore, the department has established that it was acting in compliance with department policy by determining that the claimant was not eligible for Group 2 MA Caretaker Relative benefits because he did not have a biological child in the home nor was he a primary caretaker, adoptive parent, or legal guardian of any of the minor children in the home.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department appropriately denied the claimant's MA case because the claimant was not eligible Group 2 MA Caretaker Relative benefits.

Accordingly, the department's decision is **AFFIRMED**.

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

Date Signed: November 22, 2010

Date Mailed: November 22, 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.

CGF / vc

cc:

