

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED], Jr.,
Claimant

Reg. No: 2010-833
Issue No: 3014
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
November 24, 2009
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 November 24, 2009. The claimant personally appeared and provided testimony.

ISSUE

Did the department properly determine the claimant's children were not eligible to be included in his FAP group in August, 2009?

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, FAP and MA for himself and his three children on July 9, 2009.
2. The department determined the claimant was not the primary caretaker and was, therefore, not eligible to include the children in his FIP/FAP/MA group.

3. The claimant submitted a hearing request on August 4, 2009.

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

Department policy states:

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 of the days in a calendar month, on average, in a twelve-month period. PEM, Item 212, p. 1.

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). PEM, Item 212, p. 3.

In this case, the claimant is disputing the department's actions of leaving the children on their mother's DHS case. The children were already included on their mother's case when the claimant applied for benefits for them on July 9, 2009. The claimant indicates that he and the children's mother have reached a new custody agreement and that the children should now be on his case.

Department policy requires the department to determine which parent is the primary caretaker. PEM 212. Primary caretaker is defined as 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. PEM 212.

The claimant has submitted a mutual agreement filed with the Court that outlines the custody arrangement. First off, it is worth noting that the parties have joint legal custody, but the mother has sole physical custody (See Exhibit page 7). The agreement stipulates that during the school year, the claimant has the children from after school on Friday through Sunday evening. He also has the children on Tuesday and Thursdays after school, but not overnight. During the summer break, the claimant gets the children from the week the children are out of school until the week before they return to school. The children's mother gets at least one weekend per month with the children.

If this is averaged out over 12 months, it becomes clear that the children's mother would be the primary caretaker. For example, during the school year (about 40 weeks), the claimant gets two overnights per week, which results in 80 overnights. In the summer break (about 12 weeks), the claimant receives, at most, seven nights per week minus the weekends the children's mother receives (minimum of six overnights). This would amount to 78 overnights for the claimant during the summer months. This brings the claimant's overnights to a yearly total of 158. As there is 365 nights in a year, the children's mother then has 207 overnights. As the children sleep more than half the overnights in their mother's house, she should receive primary caretaker status.

It is noted that if this arrangement changes, the claimant can provide court documents showing the new custody arrangement and the department can re-evaluate the primary caretaker status. It is also noted that the claimant only included the FAP program on his hearing request, but this same analysis would also apply to the FIP and MA programs.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department properly determined that the children's mother was the primary caretaker and properly determined the children should be included on the mother's DHS case.

Accordingly, the department's actions are UPHELD. SO ORDERED.

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

Date Signed: February 11, 2009

Date Mailed: February 11, 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.

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