

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

IN THE MATTER OF:

[REDACTED]

[REDACTED]

[REDACTED]

HEARING DECISION

This matter is before the undersigned Administrative Law Judge by authority of MCL

[REDACTED]

. After due notice, a telephone hearing was held on [REDACTED]

ISSUE

Whether the Department of Human Services (Department) properly determined the Claimant's is not the primary caretaker of his son?

FINDINGS OF FACT

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

1. On [REDACTED], the Claimant applied for Medical Assistance (MA), Child Development and Care (CDC), and Medical Assistance (MA) benefits for himself and his son.
2. The Claimant shares joint custody of his son on a week on / week off basis.
3. On [REDACTED], the Department approved the Claimant for FAP benefits as a group of one, and denied CDC because the Claimant's son does not live with him, and denied MA benefits because the Claimant is not the primary caretaker of his son.
4. The Department received the Claimant's request for a hearing, protesting the Department's determination that he is not the primary caretaker of his son.

CONCLUSIONS OF LAW

The Food Assistance Program (FAP) (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 (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), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

The Child Development and Care program is established by Titles IVA, IVE, and XX of the Social Security Act, the Child Care and Development Block Grant of 1990, and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The program is implemented by Title 45 of the Code of Federal Regulations, Parts 98 and 99. The Department of Human Services (DHS or Department) provides services to adults and children pursuant to MCL 400.14(1) and MAC R 400.5001-5015. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), Reference Table Manual (RFT), 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), Reference Table Manual (RFT), and the Bridges Reference Manual (BRM).

FAP group composition is established by determining who lives together, the relationship of the people who live together, whether the people living together purchase and prepare food together or separately, and whether the persons resides in an eligible living situation. When a child spends time with multiple caretakers who do not live together (e.g., joint physical custody), the Department will determine a primary caretaker. Only one person can be the primary caretaker and the other caretaker is considered the absent caretaker. The child is always in the FAP group of the primary 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 and the other caretaker is considered the absent caretaker. BEM 212.

For Medical Assistance (MA), 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. 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 and this parent is the primary caretaker. BEM 211.

If a child's parents live apart but have joint custody of the child, and both parents have applied and are eligible for CDC, the Department will activate the child on two cases. The Department will authorize care on each case only for time periods when the parent for that case has physical custody of the child. The client's statement of joint custody is acceptable. BEM 205.

In this case, the Claimant applied for Food Assistance Program (FAP), Child Development and Care (CDC), and Medical Assistance (MA) for himself and his son.

The Claimant was has joint custody of his son by court order, which specifies that custodial time will be shared on a week on / week off basis.

This Administrative Law Judge finds that the Claimant has custody of his son for virtually half of the days in each month, averaged over a twelve-month period.

The Claimant's son is active on another Food Assistance Program (FAP) case in a household were the son sleeps for virtually half of the days in each month, average over a twelve-month period. This case was approved before the Claimant applied for benefits. Therefore, the Claimant is considered an absent caretaker, and he may not include his son in this FAP group. This Administrative Law Judge finds that the Department properly determined that the Claimant is eligible for FAP benefits as a group of one.

The Claimant's son is active on another Medical Assistance (MA) case in a household with his primary caretaker. Since the Claimant's son is already active for MA benefits on the benefit case of his primary caretaker, the Claimant is considered the absent caretaker for the purposes of determining the MA group.

The Claimant applied for Child Development and Care (CDC) benefits for his son, and he has joint custody of his son. Both the Claimant and his son's mother have applied for CDC benefits. The Department denied CDC benefits because it determined that the Claimant's son does not live with the Claimant.

However, since the Claimant has joint custody of his son, he may be eligible for CDC benefits for the time period when he has physical custody of the child.

The Department has the burden of proving that it actions were a proper application of its policies. The Department had a duty to present the following:

- An explanation of the action(s) taken.
- A summary of the policy or laws used to determine that the action taken was correct.
- Any clarifications by central office staff of the policy or laws used.
- The facts which led to the conclusion that the policy is relevant to the disputed case action.
- The DHS procedures ensuring that the client received adequate or timely notice of the proposed action and affording all other rights. BAM 600.

In this case, the Department's denial of CDC benefits based on where the Claimant's son lives is improper. There is evidence that the Claimant has joint custody of his son, and that the son lives with the Claimant periodically. Where a child's parents have joint custody of a child, and both parents have applied for CDC, the Department will activate

the child on two cases. In this case, the Department failed to activate the Claimant's CDC benefits.

Based on the evidence and testimony available during the hearing, the Department has failed to establish that it properly determined that the Claimant is not eligible for Child Development and Care (CDC). The Department has established that it properly determined the Claimant's eligibility for Food Assistance Program (FAP) and Medical Assistance (MA).

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department acted in accordance with policy in determining the Claimant's Food Assistance Program (FAP) and Medical Assistance (MA) eligibility.

The Department's Food Assistance Program (FAP) and Medical Assistance (MA) eligibility determination are **AFFIRMED**. It is **SO ORDERED**.

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department has not established that it acted in accordance with policy in determining the Claimant's Child Development and Care (CDC) eligibility.

Accordingly, the Department's Child Development and Care (CDC) eligibility determination is **REVERSED**. It is further **ORDERED** that the Department shall:

1. Initiate a determination of the Claimant's eligibility for Child Development and Care (CDC) as of his application date of [REDACTED]
2. Provide the Claimant with written notification of the Department's revised eligibility determination.
3. Issue the Claimant any retroactive benefits she may be eligible to receive, if any.

_____/s/_____
[REDACTED]

Date Signed: _____

Date Mailed: _____

