

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:



Reg. No: 201118142  
Issue No: 1022, 2024, 3014  
Case No: [REDACTED]  
Hearing Date:  
March 17, 2011  
Genesee County DHS (2)

**ADMINISTRATIVE LAW JUDGE:** Suzanne D. Sonneborn

**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 March 17, 2011. The claimant, [REDACTED] appeared and provided testimony.

**ISSUE**

Whether the department properly determined that Claimant's two children were not eligible to be included as group members and recipients of Claimant's Family Independence Program (FIP) benefits, Food Assistance Program (FAP) benefits, and Medical Assistance (MA) benefits?

**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 January 13, 2011, the father of Claimant's two children applied for FIP, FAP, and MA benefits for himself and for himself and for the children. In support of his application, he submitted a copy of a Consent Judgment of Divorce which indicated, among other things, that he and Claimant share joint legal and physical custody of the two children with the father having the children four days a week between September and June of each year, and Claimant having the children four days a week between June and September of each year. (Hearing Summary, Department Exhibits 1-11).

2. On January 13, 2011, the department mailed Claimant a Notice of Case Action (DHS 1605) advising her of the following actions by the department, effective February 1, 2011: (i) her FIP benefits were reduced to \$ [REDACTED] per month for the reason that Claimant is not the primary caretaker of her two children; and (ii) her FAP benefits were reduced to \$ [REDACTED] per month and the two children were removed from Claimant's Medicaid case for the reason that they are not considered to be living with Claimant. (Department Exhibits 12-18).
3. On January 25, 2011, Claimant requested a hearing contesting the department's reduction of her FIP and FAP benefits and the removal of her two children from her Medicaid case. (Department Exhibits 19-21).

### **CONCLUSIONS OF LAW**

The regulations governing the hearing and appeal process for applicants and recipients of public assistance in Michigan are found in the Michigan Administrative Code, MAC R 400.901-400.951. An opportunity for a hearing shall be granted to an applicant who requests a hearing because his claim for assistance is denied. MAC R 400.903(1)

Clients have the right to contest a department decision affecting eligibility for benefit levels whenever it is believed that the decision is incorrect. BAM 600. The department will provide an administrative hearing to review the decision and determine the appropriateness of that decision. BAM 600.

The Food Assistance Program (FAP) was established pursuant to the Food Stamp Act of 1977, as amended, and is implemented by Title 7 of the Code of Federal Regulations (CFR). 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 Medical Assistance (MA) program was established by Title XIX of the Social Security Act and is implemented by Title 42 of CFR.

The Department of Human Services (DHS or department) administers these three programs pursuant to MCL 400.10, *et seq.*, and pursuant to MAC R 400.30001-3015, MAC R 400.3101-3131, and MCL 400.105, respectively. Department policies for these programs are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), the Bridges Reference Manual (BRM), and the Reference Tables Manual (RTM).

For purposes of establishing group composition and eligibility for FAP, FIP, and Low-Income Family MA benefits, department policy provides that children in a joint custody arrangement are considered to be living with only one parent, who is designated the primary caretaker. BEM 212, BEM 210, BEM 110. The primary caretaker is the parent who provides the home where the child sleeps more than half of the days in a month, when averaged over a twelve month period. BEM 212, BEM 210, BEM 110. The twelve month period begins when a primary caretaker determination is made. BEM

212, BEM 210, BEM 110. The department makes this determination by following these steps:

- The client is asked how many days the child sleeps at his/her home in a calendar month.
- The client's statement is accepted unless questionable or disputed by another caretaker – in which case, verification is needed and may include, but not be limited to:
  - the most recent court order addressing custody and/or visitation;
  - school records indicating who enrolled the child in school, who is to be contacted in case of emergency, and/or who arranges for the 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; and
  - medical providers' records showing where the child lives and who generally takes the child to medical appointments.
- The department's determination should be based on the evidence provided by both caretakers in support of his/her claim. BEM 212.

Department policy further provides that 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. BEM 212. The other caretaker is considered the absent caretaker. BEM 212.

In this case, the father of Claimant's two children, applied for FIP, FAP, and MA benefits for himself and for the two children. In support of his application, he submitted a copy of a Consent Judgment of Divorce which indicated, among other things, that he and Claimant share joint legal and physical custody of the two children with the father having the children four days a week between September and June of each year, and Claimant having the children four days a week between June and September of each year. The Consent Judgment of Divorce further provides that the father and Claimant shall each have the children for one-half of every school vacation or school break, and shall each have the right to have the children for a two week period of vacation during the summer. While the Consent Judgment of Divorce submitted to the department was neither signed by the parties nor entered by the court, at the hearing, Claimant did not dispute the terms of the custody arrangement set forth in the agreement.

Based on the terms of the parties' custody arrangement, it is clear that the father is the primary caretaker, not Claimant. To be sure, during the school year (about 40 weeks), Claimant has the children three days/nights each week, which results in 120 overnights, and during the summer break (about 12 weeks), Claimant has the children four days/nights each week, which results in 48 overnights, for a total of 168 overnights. Whereas, during the school year, the father has the children four days/nights each week (or for 160 overnights) and, during the summer break, he has them for three days/nights each week (or for 36 overnights) for a total of 196 overnights. Given that the parties share equally the children's school breaks and vacations, there can be no dispute that the father is the parent who provides the home where the children sleep more than half of the days in a month, when averaged over a twelve month period.<sup>1</sup>

For these reasons, the department properly determined that the father was (and Claimant was not) the primary caretaker for purposes of establishing the inclusion and eligibility of their children in his FIP, FAP, and MA group – and, consequently, the exclusion and ineligibility of from Claimant's FIP, FAP, and MA group.

The Administrative Law Judge finds that, based on the material and substantial evidence presented during the hearing, the department acted in accordance with policy in determining that Claimant's two children were not eligible to be included as group members and recipients of Claimant's Family Independence Program (FIP) benefits, Food Assistance Program (FAP) benefits, and Medical Assistance (MA) benefits.

#### 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 that Claimant's two children were not eligible to be included as group members and recipients of Claimant's Family Independence Program (FIP) benefits, Food Assistance Program (FAP) benefits, and Medical Assistance (MA) benefits.

The department's actions are AFFIRMED. It is SO ORDERED.

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<sup>1</sup> If this arrangement changes, Claimant can provide the department with court documents showing the new custody arrangement and the department can re-evaluate the primary caretaker status. BEM 212.

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Suzanne D. Sonneborn  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: March 18, 2011

Date Mailed: March 22, 2011

**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.

SDS/alc

cc:

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