

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. 201121345
Issue No. 3014
Case No. [REDACTED]
Hearing Date: March 22, 2011
Wayne County DHS (18)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

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 March 22, 2011. The claimant appeared and testified; [REDACTED] also appeared and testified on behalf of Claimant. On behalf of Department of Human Services (DHS), [REDACTED] and [REDACTED], appeared and testified.

ISSUE

Whether DHS properly excluded Claimant's grandchild as a group member group to determine Claimant's 11/2010 Food Assistance Program (FAP) benefit issuance.

FINDINGS OF FACT

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

1. Claimant was an ongoing FAP benefit recipient.
2. Claimant's FAP benefit group previously included the following persons: Claimant, [REDACTED] (Claimant's son), [REDACTED] [REDACTED] son and Claimant's grandchild) and [REDACTED]
3. On an unspecified date, Wayne County Friend of the Court ordered that [REDACTED] would have custody of [REDACTED] on Mondays, Tuesdays, every other weekend and for the period of [REDACTED] [REDACTED] would have custody at all other times (see Exhibit 1).

4. On an unspecified date, Claimant submitted the court order to DHS.
5. Based on the court order and an application requesting assistance made by ██████████, DHS removed ██████████ from Claimant's FAP benefit group.
6. The change removing ██████████ from the FAP benefit group was effective 11/2010.
7. On 2/25/11, Claimant requested a hearing disputing the removal of ██████████ as a FAP benefit group member.

CONCLUSIONS OF LAW

The Food Assistance Program (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 (formerly known as the Family Independence Agency) administers the FAP pursuant to Michigan Compiled Laws 400.10, *et seq.*, and Michigan Administrative Code R 400.3001-3015. DHS regulations are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RTM). Updates to DHS regulations are found in the Bridges Policy Bulletin (BPB).

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 at 3. When a child spends time with multiple caretakers who do not live together (e.g., joint physical custody, parent/grandparent, etc.), DHS is to determine a primary caretaker. *Id.* at 3. Only one person can be the primary caretaker and the other caretaker(s) is considered the absent caretaker(s). *Id.* The child is always in the FAP group of the primary caretaker. *Id.*

In the present case, Claimant disputed the removal of ██████████ as a FAP benefit group member. In defense of the removal, DHS presented a custody order which stated that Claimant's grandchild resided with his father on Mondays, Tuesdays, alternating weekends and from 11/29-12/04; the court order also stated that Claimant's mother had custody all other times. Claimant conceded that the custody court order authorized custody of ██████████ with his biological mother more than with Claimant's son, ██████████.

DHS is to determine primary caretaker status by using a twelve month period. The twelve month period begins when a primary caretaker determination is made. To determine the primary caretaker, DHS is to:

- 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.

- 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.
- 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. *Id.* at 3.

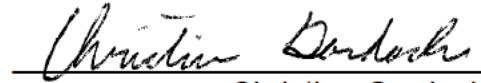
When primary caretaker status is questionable or disputed, specialists are to base the determination on the evidence provided by the caretakers. *Id.* at 10. DHS is to give each caretaker the opportunity to provide evidence supporting his/her claim. Suggested verifications include: the most recent court 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(ren) and medical providers' records showing where the child lives and who generally takes the child to medical appointments. *Id.* at 10.

Claimant stated that she (or her son) was the primary caretaker of [REDACTED] based on the amount of hours that she spent in her household. Claimant and her witness provided credible testimony that [REDACTED] spends more hours per week with her than [REDACTED] spends at his biological mother's household. However, the undersigned is not inclined to allow Claimant's testimony to trump the court order. By accepting Claimant's testimony as a superior verification than a court order deprives the biological mother an opportunity to present her side. The court order represents a fair and reliable resolution of a time when [REDACTED] father and mother were given an opportunity to present their case. Claimant may always return to court in order to have the court order amended if circumstances have changed since the order was issued. It is found that [REDACTED] resides with his biological mother more than his biological father. Accordingly, it is found that [REDACTED] biological mother is his primary caretaker.

Claimant asked if DHS could split [REDACTED] as a group member between her and [REDACTED] mother case to reflect the shared custody. As stated above, only one caretaker is the primary caretaker and other caretakers are considered to be absent caretakers. Accordingly, DHS properly removed [REDACTED] from Claimant's FAP benefit case so that he could be added to his biological mother's case.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly determined Claimant's FAP benefit group to exclude Adam as a group member to be effective 11/2010. The actions taken by DHS are AFFIRMED.



Christian Gardocki
Administrative Law Judge
For Maura Corrigan, Director
Department of Human Services

Date Signed: 04/01/11

Date Mailed: 04/06/11

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.

CG/dj

cc:

