

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
ADMINISTRATIVE HEARINGS FOR THE  
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 2011-28937

Issue No: 3014

[REDACTED]

May 12, 2011

Bay County DHS

ADMINISTRATIVE LAW JUDGE: Suzanne L. Morris

**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 received on April 1, 2011. After due notice, a telephone hearing was held on [REDACTED]. Claimant personally 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 Food Assistance Program (FAP) 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. The claimant had been receiving FAP benefits for his two children since June, 2009. (Department Exhibit 3)
2. On March 21, 2011, the local office was notified by an Office of Child Support (OCS) staff member that the claimant's ex-wife (mother of the children) stated she had the children for more overnights and that she should be the primary caretaker and have the children on her case. (Department Exhibit 3)
3. The department removed the children from the claimant's case effective May 1, 2011, as indicated in a Notice of Case Action (DHS-1605) issued on March 22, 2011. (Department Exhibit 5 – 9)

4. The claimant submitted a hearing request on April 1, 2011.

### **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 affective eligibility for benefit levels whenever it is believed that the decision is incorrect. 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) (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 Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Bridges Reference Manual (BRM).

For purposes of establishing group composition and eligibility for FAP, 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. The other caretaker is considered the absent caretaker. BEM 212.

In this case, the local office took action to remove the children from the claimant's case when an OCS worker emailed them information to indicate that the children's mother had claimed the court order showed she had the children more than 50% of the time. The Department of Human Services staff member testified that she does not have a copy of that referenced court order. It does not appear from the email that the OCS worker ever saw a copy of the court order. Thus, it does not appear that appropriate verification (see BEM 212 above) of the actual custody status was ever obtained by the department.

For these reasons, the department improperly determined that claimant was not the primary caretaker for purposes of establishing the inclusion and eligibility of his children in the FAP group. The Administrative Law Judge finds that the department did not obtain appropriate documentation in accordance with policy to make a primary caretaker determination.

### DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the department improperly determined the claimant's ex-wife is the primary caretaker of the children and improperly removed the children from the claimant's FAP group.

The department's actions are REVERSED and the department shall obtain proper documentation, in accordance with department policy, from the children's parents to make a primary caretaker decision.

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It is SO ORDERED.

\_\_\_\_\_/s/\_\_\_\_\_  
Suzanne L. Morris  
Administrative Law Judge  
for Maura D. Corrigan, Director  
Department of Human Services

Date Signed: 5/13/11

Date Mailed: 5/13/11

**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.

[REDACTED]